TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1916.

No. [redacted]74

PURE OIL COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF MINNESOTA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

FILED NOVEMBER 27, 1916.

(25,615)

(25,615)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 785.

PURE OIL COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF MINNESOTA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

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STATE OF MINNESOTA, County of Ramsey. DISTRICT COURT, Second Judicial District.

STATE OF MINNESOTA,
vs. Plaintiff,
PURE OIL COMPANY, a Corporation,
Defendant.

2

SUMMONS.

The State of Minnesota to the above named Defendant:

You are hereby summoned and required to answer the complaint of the plaintiff in the above entitled action, which complaint is herewith annexed and herewith served upon you, and to serve a copy of your answer to the said complaint upon the subscribers hereof at their office in the capitol, at the city of St. Paul, Ramsey county, Minnesota, within twenty (20) days after the service of this summons upon you, exclusive of the day of such service upon you; and if you fail to answer as, aforesaid within the time aforesaid, the plaintiff in this action will take judgment against you for the sum of ten thousand four hundred forty-nine dollars ($10,449) with interest thereon as provided by law, together with the costs and disbursements of this action. 3

Dated at St. Paul, Minnesota, May 15th, 1915.

LYNDON A. SMITH,
Attorney General,
WILLIAM J. STEVENSON,
Assistant Attorney General,
Attorneys for the State of Minnesota,
The Capitol,
Saint Paul, Minnesota.

STATE OF MINNESOTA, County of Ramsey. DISTRICT COURT, Second Judicial District.

COMPLAINT.

Plaintiff for complaint in the above entitled action alleges:

I.

That during all of the times hereinafter mentioned the defendant has been and now is a corporation created, organized and existing under the laws of the state of South Dakota, and duly licensed to do business within the state of Minnesota as a foreign corporation under the provisions of Sections 6206 and 6207, G. S. 1913, with places of business at Minneapolis, St. Paul and Excelsior in said state of Minnesota.

II.

That between February 1, 1913, and April 25, 1915, the plaintiff by and through its chief state inspector of oils, and his duly appointed, qualified and acting deputies, at the request of the defendant and pursuant to the statutes in such case made and provided, duly inspected and caused to be branded illuminating oils and gasoline held by the defendant for sale as such within Minnesota upon the dates and in the quantities set forth in Exhibits 1 to 24, inclusive, which are hereto attached and hereby made a part hereof.

That the fees provided by statute, viz: Section 3630, G. S. 1913, for such inspecting and branding were as set forth in said respective exhibits, and that said exhibits are true and correct in all respects.

That all of said illuminating oils and gasoline so inspected and afterwards branded were in tank cars containing more than fifty (50) barrels each. That the quantity of illuminating oils and gasoline which defendant claimed to have subsequently shipped out of the state for use or sale outside of Minnesota, and which had been previously inspected as aforesaid, was reported to said chief state inspector of oils by the defendant. A credit for such outshipments was duly allowed the defendant for the fees previously charged for such inspection, and that all of such credits are shown on said respective exhibits. That the sum due the state and herein claimed from the de-

fendant upon each of the said exhibits represents only the fees of the state for inspecting and branding illuminating oils and gasoline held by the defendant and in its possession for use and sale as such within the state of Minnesota. 7

III.

That on or before the tenth day of each month during said time, said inspector certified and reported to the state auditor of Minnesota the money due from the defendant for such fees for the preceding month, as stated and shown in said exhibits, and that thereupon demand was made upon the defendant before the 15th day of each month and before the commencement of this action for such fees so earned, accrued and certified for the preceding month except that the fees so earned and accrued for the month of April, 1915, were so certified and reported to the state auditor on April 26, 1915, and demand forthwith made upon the defendant for the payment thereof before the commencement of this action. That the fees so accruing to the plaintiff from the defendant during said time are as follows: 8

Month	Year	Amount
February	1913	$274.10
March	1913	59.90
April	1913	339.30
May	1913	579.10
June	1913	495.90
October	1913	300.00
December	1913	294.00
January	1914	285.00
February	1914	302.50
March	1914	217.50
April	1914	224.20
May	1914	722.50
June	1914	480.70
July	1914	592.20
August	1914	683.60
September	1914	744.30
October	1914	679.30
November	1914	644.80
December	1914	321.30
January	1915	428.70
February	1915	258.30
March	1915	373.30
April	1915	440.30
		Total $10,449.00

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IV.

10 That no part of said fees has ever been paid and that the defendant has failed, neglected and arbitrarily refused to pay such fees and any part thereof.

That during all of said time the defendant has continued to request such inspection and to accept, receive and use the official certificates showing the result of such inspection, and has sold said oils and gasoline under the branding of the state showing the quality thereof; and said defendant has thereby accepted and retained all of the benefits of such inspection.

Wherefore, plaintiff demands judgment against the defendant for the sum of ten thousand four hundred forty-nine dollars ($10,449), with interest thereon as provided by law, together with the costs and disbursements of this action.

11 Dated May 15th, 1915.

LYNDON A. SMITH,
Attorney General,
WILLIAM J. STEVENSON,
Assistant Attorney General,
Attorneys for Plaintiff.

STATE OF MINNESOTA,
ss.
County of Ramsey.

Lyndon A. Smith, being duly sworn, deposes and says that he is the duly elected, qualified and acting attorney general of the state of Minnesota; that he has read the foregoing complaint and knows the contents thereof and that the same is true to the best of his knowledge, information and belief.

LYNDON A. SMITH.

12 Subscribed and sworn to before me this 15th day of May, 1915.

DAISY G. STRUTZEL,
Notary Public,
Ramsey County, Minnesota.

(Notarial Seal)

My commission expires June 1, 1916.

Endorsed: Filed July 13, 1915; Matt Jensen, Clerk; by G. P. Ritt, Deputy.

(Exhibits 1 to 24 superceded by agreed statement of facts appended to settled case, being Plaintiff's Exhibit A).

STATE OF MINNESOTA, County of Ramsey. DISTRICT COURT, Second Judicial District. 13

STATE OF MINNESOTA,
vs. Plaintiff,
PURE OIL COMPANY, a Corporation,
Defendant.

AMENDED ANSWER.

Defendant above named, as and for its amended answer to the complaint of plaintiff herein:

I.

1. Admits all and several the allegations set forth and contained in subdivision I of plaintiff's complaint.

2. Specifically denies that the illuminating oils and 14
gasoline, mentioned and referred to in the first paragraph of subdivision II, of plaintiff's complaint,—including all and several the oils and gasoline mentioned and referred to in plaintiff's Exhibits 1 to 24, both inclusive,—or any part or portion of said illuminating oils and gasoline, were inspected as alleged in said first paragraph of subdivision II of plaintiff's complaint, or otherwise, or at all.

3. Admits that the fee of ten cents per barrel for inspection and branding of illuminating oil or gasoline, in tanks or tank cars containing more than 50 barrels, was the fee designated and provided by the laws of this state during the period covered by the complaint herein; and further admits that all of said illuminating oils and gasoline referred to and embraced in said plaintiff's Exhibits 1 to 24, both inclusive, were received by this defendant in tank 15
cars, being and constituting original packages, containing more than 50 barrels each.

4. Further answering, defendant denies that plaintiff's Exhibits numbered 1 to 24, both inclusive, mentioned and referred to in the three paragraphs of subdivision II of plaintiff's complaint, or any or either of said exhibits, are true and correct, in that, among other things, defendant is therein charged for inspection of 4,483 barrels of naptha, during the months of April and May, 1913, the same not being subject to, and for which no provision for inspection is made under or by, the laws of Minnesota, and further, among other things, that large quantities of the illuminating oils and gasoline mentioned and embraced in said several exhibits, and each thereof, were shipped outside of the state of Minnesota by defendant herein for sale and use

16 outside of said state, aside from and in addition to the out-of-state shipments for which defendant has been given credit by plaintiff, as provided by the laws of said state, in said exhibits aforesaid; that the aggregate amount of said additional out-of-state shipments so made by defendant, as aforesaid, of illuminating oils and gasoline embraced and mentioned in said exhibits, is and was of the amount and quantity of 9,637 barrels, as is more fully shown and set forth by defendant's Exhibit A, hereto attached and hereby made part hereof as though set out herein in full; for which additional out-of-state shipments this answering defendant would be and is entitled to the credit provided by law, if the validity of Chapter 502, Laws of Minnesota for the year 1909 (being Sections 3619-3632, General Statutes of Minnesota, 1913, and being hereinafter designated and referred to as "Oil Inspection Law of 1909") be sus-
17 tained in this action and plaintiff be finally adjudged entitled to recover herein.

5. Further answering, defendant admits that it has paid no inspection fees whatsoever to plaintiff herein for and during the period covered by plaintiff's complaint, and on the illuminating oils and gasoline enumerated and designated in plaintiff's Exhibits 1 to 24.

6. Defendant further admits that during all of the times covered and embraced by the complaint herein, it has immediately notified the chief state inspector of oils, or one of his duly appointed, qualified and acting deputies, of the arrival of each and all of said tank cars, giving the number and date of arrival thereof, and has received and used certain official certificates supplied to it by
18 plaintiff through its state oil inspection department.

7. Further answering, this defendant denies each and every allegation, matter and thing in plaintiff's complaint alleged and contained, save and excepting such matters as are hereinbefore admitted, qualified or specifically denied.

II.

8. Further answering, and as and for a first separate, affirmative defense herein, defendant repeats and re-alleges all and several the allegations and matter contained in paragraphs numbered 1 to 6 of this amended answer and makes the same a part hereof as though set out herein in full.

9. Further answering, defendant alleges that said oil inspection law of 1909, was in operation from July 2nd, 1909, to April 23rd, 1915. That under said law, certain

processes and proceedings were provided for the inspection 19
and branding of illuminating oils and gasoline, and a chief inspector of oils created,—with power of appointment of deputies,—for the inspection and branding of all illuminating oils and gasoline made, offered for sale, or sold within the state of Minnesota. That said law provided, among other things, that oil or gasoline shipped into the state in tanks, or tank cars, should not be unloaded until inspected and that the fees for said inspection and branding should be 40 cents for a single barrel or other receptacle containing not more than 55 gallons; 25 cents per barrel for inspection and branding of more than one, and not more than 10 of such receptacles at one time and place; 15 cents for each additional barrel or receptacle, if more than 10; and 10 cents per barrel when contained in tanks or tank cars containing more than 50 barrels, said fees being payable at the time of inspection. That said law further provided, 20
among other things, that all kerosene oil and gasoline inspected in other states, where the inspection requirements were as high as those required by said oil inspection law of 1909, might be admitted without additional inspection provided the fees (hereinbefore enumerated), prescribed and required by said oil inspection law of 1909, were paid. That said law further provided that where oil and gasoline were shipped outside of the state of Minnesota, after said inspection fees had been paid, the party shipping the same should be given credit by said inspector for said fees. That said law further provided that on or before the 10th of each month, the inspector should certify to the state auditor the money due from any individual, co-partnership, or corporation, for inspection fees, and that the state auditor should collect the same and pay them into 21
the state treasury; that all monies so collected should be credited to the "Oil Inspection Fund"; that out of said fund the sum of forty thousand dollars ($40,000) or so much thereof as might be necessary was appropriated annually for payment of salaries of said inspector, his deputies and office force and other expenses provided for by said law. That said law further provided that no illuminating oil or gasoline should be sold, offered for sale, or used, unless the same had been so inspected and branded, and further provided that any person, firm or corporation wilfully violating any of the provisions of said oil inspection law of 1909 should be guilty of a misdemeanor.

10. Defendant further alleges that immediately preceding the taking effect of said oil inspection law of 1909, on July 2nd, 1909, as aforesaid, a similar oil inspection law

22 was and had been in force in said state from January 1st, 1903, being Chapter 123, General Laws, Minnesota, 1901. That the schedule of fees for inspection and branding, under said prior enactment, were substantially the same as those embodied in said oil inspection law of 1909, save that the inspection fee on oils and gasoline in tanks or tank cars was 15 cents per 55 gallon barrel.

11. Defendant further alleges that none of the illuminating oils and gasoline subject to inspection and branding under said oil inspection law of 1909, or under that of the said preceding law of 1901, emanate from, or are made or produced within, the state of Minnesota, but that all of said illuminating oils and gasoline used and merchandised in said state during the period covered by said oil inspection law of 1901 and said oil inspection law of 1909, and subject to the provisions of said laws, have been purchased
23 at points outside of said state, free on board of cars at place of purchase, and shipped from said points, in original packages, to points in said state, freight being paid by said purchasers in said state.

12. Defendant further alleges that the amounts annually received by plaintiff, as inspection and branding fees in the conduct, execution and enforcement of said oil inspection law of 1901 and said oil inspection law of 1909, and of each thereof, have, in each year of the operation thereof, been exorbitant, unlawful and largely in excess of the amounts, either annually or cumulative, absolutely necessary to be, or, in fact, expended by plaintiff in the conduct, execution and enforcement of said inspection laws, and each and either thereof, and that said oil inspection fees have at all times been and operated as an unreasona-
24 ble, and unlawful charge for the services performed by plaintiff in the conduct, execution and enforcement of said inspection laws and for the benefits contemplated and bestowed by said laws, and each thereof. That the amounts received by plaintiff as and for said oil inspection fees and those by it paid and incurred in the conduct, execution and enforcement of said laws, and each thereof, together with the excess and surplus arising therefrom, for the several years hereinafter enumerated, have been, as stated in the published reports of said oil inspection department, as follows:

Year ending	Net Fees	Total Expense	Excess	Percentage of Expense to Income
July 31, 1906	30,242.90	27,152.42	3090.48	90%
" " 1907	32,208.05	29,140.00	3068.05	90%
" " 1908	43,864.15	29,999.08	13865.07	68%
" " 1909	40,836.45	32,588.29	8248.16	80%
" " 1910	53,560.60	40,612.55	12948.05	76%
" " 1911	58,402.30	41,884.18	16518.12	70%
" " 1912	64,749.65	44,806.93	19942.72	68%
" " 1913	76,495.85	40,796.23	35699.62	53%
" " 1914	89,361.45	52,515.56	36845.89	58%
" " 1914 to Apr. 22, 1915	74,588.91	46,340.50	28248.41	62%

13. Defendant further alleges that the fact of the existence and continuance of such excess, for each and all of the years hereinbefore enumerated, has at all times been a matter of public record in the respective offices of said chief state inspector of oils and of the state auditor of said state of Minnesota.

14. Further answering, defendant alleges that during all of the times mentioned and referred to in plaintiff's complaint defendant has been and still is engaged in the business of buying, and selling at wholesale and retail, large quantities of illuminating oils and gasoline; each and all of which came within the purview and operation of said oil inspection law of 1909. That none of the said illuminating oils and gasoline (including all of those mentioned and referred to in the complaint herein), so purchased, sold and used by defendant in its said business during the times mentioned and referred to in plaintiff's complaint, or at any other time, were or are purchased within said state of Minnesota. That all illuminating oils and gasoline so purchased, sold and used by said defendant during the times aforesaid, including all of those mentioned and referred to in the complaint of plaintiff herein, were and always have been purchased by defendant outside of the state of Minnesota, to be by the vendor delivered free on board of cars at place of purchase and shipped to defendant at its various places of business within the state of Minnesota in the original unbroken packages, freight thereon being paid by defendant; and that all of said illuminating oils and gasoline hereinbefore mentioned were, in fact, so purchased, and shipped from refineries and localities outside of the state of Minnesota to defendant at its various places of business within the said state of Minnesota,

28 in large steel tank cars having a capacity of, and containing over 50 barrels each, over various lines of railway carrying on and conducting a business in interstate traffic; that by reason of the facts hereinbefore and in this paragraph set forth and alleged, all of said illuminating oils, gasoline and petroleum products, so purchased, sold and used by defendant in the conduct and operation of its said business, as aforesaid, constituted and were articles and subjects of interstate commerce.

15. Defendant further alleges that the oil inspection fees for which defendant would be responsible and liable to plaintiff under said oil inspection law of 1909, if plaintiff be finally adjudged entitled to recover herein, for the period occurring between February 1st, 1913, and April 25th, 1915, averaged about four hundred dollars ($400.00) per month; that such fees, as hereinbefore stated, were
29 largely in excess of the amount absolutely necessary to be, or in fact, expended by plaintiff in defraying the cost and expense necessary and incident to the conduct, enforcement and execution of the provisions and requirements of said oil inspection law of 1909, and that such excess forms part and parcel of and is included in the excess for the years ending July 31, 1913, and July 31, 1914, and the period ending April 22nd, 1915, hereinbefore and in paragraph numbered 12 tabulated and set forth.

16. Further answering, defendant alleges that the excess in amount of fees, derived by plaintiff in and from the conduct, execution and enforcement of said oil inspection law of 1909, over and above the amount absolutely necessary to be and in fact, expended by plaintiff in defraying the actual costs and expenses necessary and incident to the
30 conduct, execution and enforcement of the provisions of said oil inspection law of 1909, while directed by said law to be placed to the credit of the so-called "Oil Inspection Fund," was at no time placed to the credit of said fund, but was at all times placed and deposited to the credit of and became commingled with, and formed part and parcel of, the so-called general fund of the treasury of plaintiff, and that neither the same, nor any part thereof, was at any time in anywise appropriated or used or subject to be lawfully appropriated or used, in any manner whatsoever that did or would in anywise result in any benefit whatsoever to any person, persons, co-partnership or corporation (including this defendant) required to pay said inspection fees under and by virtue of the provisions of said oil inspection law of 1909; on the contrary, that the same and all thereof was, from time to time, appropriated to and

used in defraying and paying other expenses of plaintiff in nowise connected with or incident to the conduct, execution and enforcement of said oil inspection law. 31

17. Defendant further alleges that by reason of the facts hereinbefore alleged, said provisions of said laws, and the execution and enforcement thereof, have at all times constituted and operated as an unreasonable and unlawful direct attempt upon the part of plaintiff to levy and impose an impost or duty,—to the extent of the excess, as hereinbefore alleged, over and above the amount absolutely and reasonably necessary to carry out and execute the purposes of said laws, and each thereof, and over and above the disbursements and expenses actually paid out and incurred by plaintiff in carrying out and effectuating the purposes of said laws, and each thereof,—and that by reason thereof said oil inspection law of 1909 was repugnant to and in violation of the second clause of Section 10, Article I of the Constitution of the United States, and therefore absolutely null and void. 32

III.

18. Further answering, and as and for a second separate affirmative defense herein, defendant repeats and realleges all and several the allegations and matters set forth and contained in paragraphs numbered 1 to 6, and 8 to 16, both inclusive, of this amended answer, and makes the same part hereof as though set out herein in full.

19. Further answering, defendant alleges that at all times during the operation of said oil inspection law of 1909, defendant has been assessed, under the general tax laws of said state of Minnesota, relating to personal property, upon all and several the illuminating oil and gasoline, subject to the provisions of said inspection law, owned and possessed by it within said state on, and as of, the first day of May in each year, and has at all times paid said taxes so levied and assessed. 33

20. Further answering, defendant alleges that the fees prescribed, imposed and collected by and under said oil inspection laws, and each thereof, were at all times exorbitant and unlawful and largely in excess of the amount absolutely necessary to be, or, in fact, expended by plaintiff in defraying the cost and expense necessary and incident to the conduct, enforcement and execution of said laws and that by reason thereof, and of the facts hereinbefore alleged, the provisions of said laws, and the conduct, execution and enforcement thereof, have at all times constituted, and operated as an unreasonable and unlaw-

34 ful tax upon, and regulation of and interference with, interstate commerce, and for that reason said oil inspection law of 1909 was repugnant to and in violation of the third clause of Section 8, Article 1 of the Constitution of the United States, and therefore absolutely null and void.

IV.

21. Further answering, and as and for a third separate affirmative defense herein, defendant repeats and realleges all and several the allegations and matter set forth and contained in paragraphs numbered 1 to 6, and 8 to 16, both inclusive, of this amended answer, and makes the same a part hereof as though set out herein in full.

22. Further answering, defendant alleges that it has been at all times assessed, under the general tax laws of said state of Minnesota, upon all and several the illuminat-
35 ing oils and gasoline, subject to the provisions of said oil inspection law of 1909, owned and possessed by it within said state of Minnesota, on, and, as of, the first day of May in and for the years 1912-1915, both inclusive, and that it has duly paid all and several said taxes so levied and assessed against it as aforesaid (save the tax levied for the year 1915).

23. Further answering, defendant alleges that by reason of the facts hereinbefore alleged, said oil inspection law of 1909 at all times constituted and operated as double taxation, and, in addition, as a direct and unlawful tax upon personal property, all in violation of the provisions of Section 1, of Article 9, of the Constitution of the state of Minnesota, and of the statutes of the state of Minnesota, relating to taxation of personal property, in such case
36 made and provided.

V.

24. Further answering, and as and for a fourth separate affirmative defense herein, defendant repeats and realleges all and several the allegations and matter set forth in paragraphs numbered 1 to 6, and 8 to 16, both inclusive, of this amended answer and makes the same part hereof as though set out herein in full.

25. Further answering defendant alleges that under the provisions and requirements of said oil inspection law of 1909, the inspection of gasoline is limited wholly and solely to making a test to ascertain the gravity thereof. Defendant further alleges that by reason thereof, and of the facts hereinbefore in this amended answer alleged, said inspection of gasoline, so provided for and required by said

oil inspection law is not, and does not in anywise constitute, a valid or lawful exercise of the police power of plaintiff herein and that for that reason said oil inspection law of 1909,—or at least such portion or part thereof as in anywise applies or relates to the inspection of gasoline,—is null and void and in violation of the 7th Section of Article I and of the 1st Section of Article 9 of the Constitution of the state of Minnesota, and of the 14th amendment of the constitution of the United States. 37

Wherefore, defendant prays judgment that said action be henceforth dismissed, on the merits, and that defendant have and recover of plaintiff its costs and disbursements herein incurred; together with such other and further relief as defendant may be adjudged entitled to.

Dated November 8th, 1915.

NATHAN H. CHASE and
GEORGE E. DYER, 38
Attorneys for Defendant,
607-9 First Nat.-Soo Bldg.,
Minneapolis, Minnesota.

STATE OF MINNESOTA,
ss.
County of Hennepin.

L. B. Hancock, being first duly sworn, upon oath deposes and says, that he is an officer, to-wit, the secretary and treasurer, of defendant herein; that he has knowledge of the facts alleged and set forth in the foregoing amended answer; that he has read the same and that the same is true of his own knowledge, save as to such matters as are therein stated on information and belief, and that as to those matters he believes them to be true. 39

L. B. HANCOCK.

Subscribed and sworn to before me this 9th day of November, 1915.

NATHAN H. CHASE,
(Notarial Seal) Notary Public,
Hennepin County, Minnesota.

My commission expires May 7th, 1922.

(Exhibit A superceded by agreed statement of facts appended to settled case, being Plaintiff's Exhibit A).

Endorsed: Filed Nov. 17, 1915; N. C. Robinson, Clerk; by G. A. Johnson, Deputy.

40 STATE OF MINNESOTA, DISTRICT COURT,
County of Ramsey. Second Judicial District.

STATE OF MINNESOTA,
vs. Plaintiff,
PURE OIL COMPANY, a Corporation,
Defendant.

REPLY.

I.

Plaintiff for its reply to the answer of the defendant in the above entitled action denies each and every allegation, matter and thing in said answer contained except as hereinafter admitted.

41 II.

Further replying, plaintiff alleges as to the statements contained in paragraph 4 of defendant's answer that if the four thousand four hundred eighty-three (4,483) barrels of the commodity inspected and certified by the plaintiff was naptha that it was at the time of said inspection and thereafter held for sale by the defendant within the state of Minnesota as and for gasoline; and plaintiff alleges upon information and belief that said entire quantity of said commodity was actually sold by the defendant within said state as gasoline and not as naptha.

Further replying to said paragraph, plaintiff alleges that it has no knowledge or information sufficient to form a belief as to the additional out-of-state shipments there claimed by the defendant, and therefore denies the same; and plaintiff further alleges all claims made by the de-
42 fendant prior to the commencement of this action for out-of-state shipments were duly allowed by the chief state inspector of oils and due credit therefor was given by the plaintiff to the defendant for the amount of inspection fees previously charged thereon; that if defendant has made further out-of-state shipments than those heretofore claimed, they are shipments of oil and gasoline, the inspection fees of which have not been previously paid.

Plaintiff admits that none of the oil and gasoline which was the subject of the inspection in this action was originally produced or refined in the state of Minnesota, but denies any knowledge or information sufficient to form a belief as to where the defendant purchased said oils and gasoline and as to the initial point of shipment, method of purchase or place of delivery to the defendant.

III.

Plaintiff specifically denies each and all of paragraph 43
12 of defendant's answer and alleges that the total receipts from the oil inspection department of the state for the years hereinafter mentioned were as follows and not otherwise:

Year Ending July 31	Receipts
1903	$14,626.10
1904	30,334.05
1905	28,597.35
1906	30,242.70
1907	32,208.05
1908	43,864.15
1909	34,934.40
1910	50,667.67
1911	56,852.84
1912	63,354.35 44
1913	72,656.38
1914	81,565.90
July 31 to Apr. 30, 1915	62,689.20

Plaintiff further denies that said receipts were largely in excess or at all in excess during said years, or any of them, of the actual cost to the state of the enforcement of said oil inspection laws.

IV.

Plaintiff denies any knowledge or information sufficient to form a belief as to the truth of the statements and allegations contained in paragraphs 14, 19 and 22, of defendant's said answer, and therefore denies the same.

Wherefore, plaintiff demands judgment as prayed for in its complaint herein.

LYNDON A. SMITH, 45
Attorney General,
WILLIAM J. STEVENSON,
Assistant Attorney General,
Attorneys for Plaintiff.

STATE OF MINNESOTA,
ss.
County of Ramsey.

Lyndon A. Smith, being duly sworn, deposes and says that he is the duly elected, qualified and acting attorney general of the state of Minnesota; that he has read the foregoing reply and knows the contents thereof and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and that as to those matters he believes it to be true.

LYNDON A. SMITH.

Subscribed and sworn to before me this 8th day of September, 1915.

EDITH GRAHAM,
(Seal) Notary Public,
Hennepin County, Minnesota.

My commission expires March 18, 1916.

Endorsed Filed Feb. 28, 1916; N. C. Robinson, Clerk; by G. P. Ritt, Deputy.

STATE OF MINNESOTA, County of Ramsey. DISTRICT COURT, Second Judicial District.

STATE OF MINNESOTA,
vs. Plaintiff,
PURE OIL COMPANY, a Corporation,
Defendant.

STIPULATION.

The above named defendant having interposed and served an amended answer to the complaint of plaintiff herein:

It is hereby stipulated and agreed by and between the respective parties hereto that the reply heretofore interposed by plaintiff, may stand as and for the reply to said amended answer.

Dated November 11th, 1915.

LYNDON A. SMITH,
WILLIAM J. STEVENSON,
Attorneys for Plaintiff.
NATHAN H. CHASE and
GEORGE E. DYER,
Attorneys for Defendant,
607-9 First Nat.-Soo Bldg.,
Minneapolis, Minnesota.

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STATE OF MINNESOTA, DISTRICT COURT,
County of Ramsey. Second Judicial District. 49

THE STATE OF MINNESOTA,
vs. Plaintiff,
PURE OIL COMPANY,
Defendant.

SETTLED CASE.

119967.

The above entitled cause came on for trial before Hon. J. C. Michael, J., without a jury, on February 3rd, 1916, at 2 p. m.

Wm. J. Stevenson appeared for the plaintiff, and N. H. Chase appeared for the defendant.

Mr. Stevenson: It is conceded by the plaintiff that 50
some 4,800 barrels of naptha were brought into the state by the defendant shortly prior to the 9th of June, 1913, and the oil inspector inspected the naptha, which came in tank cars, and certified the facts against the Pure Oil Company on the theory they had gotten naptha to sell as gasoline, and they were about to dispose of it in the state as gasoline, the state claims the naptha was sold by the defendant as gasoline, and for that reason we should inspect it. In the stipulation of facts the defendant admits that 50 per cent of that naptha was used as gasoline, mixed with a higher grade gasoline, and put off on the public as gasoline of a specific gravity that would be the same as gasoline; the 57 degree naptha being mixed with 70 or 72 degree gasoline, making a gravity of 64 or 65, and the quantity, however, of that naptha that was used and sold 51
as gasoline, while it was stipulated between the parties as being 50 per cent, it is understood the state may cross examine Mr. Hancock on that matter to ascertain whether or not that statement is true.

CARL DANIELSON,

sworn on behalf of plaintiff, testified:

By Mr. Stevenson:

Q. You are in the employ of the Pure Oil Co.?

A. Yes, sir.

Q. How long have you worked for them?

A. Eight years.

Q. What are your duties with the Pure Oil Co.?

A. I have been having charge of all the gasoline and tank cars of gasoline and kerosene, in Minneapolis.

Q. Were you working for the Pure Oil Co. in that ca-

52 pacity when they got their large shipments of naptha in May and June, 1913?

A. Yes, sir.

Q. You remember the occasion of the naptha coming?

A. Yes, sir.

Q. How many tank cars were there?

A. I can't remember.

Q. About 23, weren't there?

A. I don't know; I couldn't say.

Q. How many cars of naptha do they usually get in a month?

A. Now, or before?

Q. Ever since?

A. Well, after that time I suppose we get about a couple of cars a month.

Q. Before that how many did they used to get at Min-
53 neapolis?

A. I don't remember exactly how many.

Q. One or two before they got this big shipment, would you say as much as that, as much as one or two?

A. Yes, there was that, I guess; maybe more.

Q. What was done with the 23 tank cars of naptha that were gotten in May and June, 1913?

A. It was sold, I suppose.

Q. Was it mixed with gasoline?

A. Some of it.

Q. How much of it?

A. I couldn't say exactly how much; I suppose maybe about half of it.

Q. Would you say that not more than half of it was mixed with other gasoline and sold for gasoline?

54 Objected to as immaterial.

The Court: Is it conceded by the State that naptha, as such, is not subject to inspection?

Mr. Stevenson: Naptha as such is not within the inspection law as it stood at that time; it is also provided no gasoline shall be sold that is adulterated.

The Court: I will take the evidence subject to the objection. I think there is some doubt whether it is material or not.

Exception by defendant.

A. No, I don't think over half of it.

Mr. Chase: We move to strike out the answer upon the same ground urged in our objection.

The Court: The same ruling. Exception.

Q. What was done with the half that was not mixed with gasoline?

A. Sold as naptha.

Mr. Chase: We move the answer be stricken out so I may object. 55

The Court: The answer may be stricken out to give the counsel an opportunity to object.

Mr. Chase: We object as immaterial what was done with the half that was not mixed.

The Court: I think, under your objection, he may tell the whole story.

Mr. Chase: Then may it be understood that any testimony given by this witness as to this naptha proposition may be taken subject to the objection as to its materiality and subject my motion to strike out all the several answers in that respect?

The Court: It may be so understood.

A. Sold as naptha.

Q. How long did it take to sell 11 tank cars of naptha as naptha? 56

A. I couldn't say exactly how long it would take, how many years, exactly.

Q. Have you some of it on hand yet?

A. We have some naptha, yes.

Q. Do you know whether it is the same naptha?

A. No, it is not the same.

Q. Have you been buying naptha right along since then?

A. Yes, sir.

Q. You say of your own knowledge that as much as 11 carloads of that naptha was sold in Minnesota as naptha?

A. I think it was, yes.

Q. Was it shipped out of Minneapolis?

A. Yes, it was shipped and filled in barrels and shipped out as local freight. 57

Q. Do you know where it was shipped to?

A. Some of it, yes.

Q. Where?

A. Some of it was shipped to North Dakota, and some of it down in Wisconsin; part of it was sold in the city.

Q. You say they have been buying naptha right along ever since?

A. Yes, sir.

Q. Been buying just about as much naptha per month since this big shipment as they bought per month before the big shipment, haven't they?

A. Just about the same.

Mr. Chase: We move all and several of this testimony of this witness as to the naptha proposition be stricken out as immaterial under any issues presented by the pleadings in this case and the stipulated facts.

58 The Court: I think the court is entitled to know if this is the end of the naptha testimony before ruling on that.

Mr. Stevenson: This is the end of the testimony as to the naptha.

The Court: On what theory do you claim this testimony is competent?

Mr. Stevenson: On this theory: It is impossible to tell what is naptha and what is gasoline. They are both products of the same distillation. It is like trying to draw the line between daylight and dark; there is a twilight zone. Gasoline is inspected down as low as 57 and called gasoline. This concern gets in 23 carloads of a commodity that has applied to it naptha, but it has a specific gravity only one degree less than what they have been commonly buying as gasoline that is inspected at 57, and put in the channels of trade as gasoline, and so entered in the stipulation
59 of fact, and the only question was whether somebody would testify not more than 50 per cent of it was sold as gasoline. Are they in any position to say that it is not gasoline if they have sold it to the public as gasoline as government tests of gasoline.

The Court Can the court take judicial notice of the distinction between naptha and gasoline? That is what is running in the court's mind; you have no evidence showing they are from the same base, or the line of distinction of specific gravity between the two liquids if they are from the same grades.

Mr. Stevenson: That is probably so; there should be some technical testimony to show that. I presume before the case is over that will be shown very clearly, because I understand Mr. Chase intends to put on all the chemists
60 he can find.

The Court: The court is asked to rule on this at the present time?

Mr. Stevenson: I would ask that the court refrain from ruling at this time until all the testimony is in. We are put in this position, that the defendant practically admits our case, and sets up its defenses, so that the State's testimony must really come in on rebuttal, rather than on direct testimony at this time.

Mr. Chase: I renew my objections on the grounds stated, immaterial under any issue and under the agreed statement of facts, and move that the testimony be stricken out.

The Court: I understand that the state rests at this time?

Mr. Stevenson: The State rests.

The Court: I think the motion must be granted.
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Exception by the plaintiff.

Mr. Chase: At this time we move for a dismissal of this case on the merits, on the ground that under the pleadings in this case and under the agreed statement of facts the plaintiff has failed to make out a prima facie case. If we have not received the inspection provided for by the Act, if the State has not, through its duly appointed and accredited agents performed the services which go to the very essence and foundation and purpose of that law, that inspection law, we are no more liable to pay than we would be in case we were being sued by an individual for compensation for services not rendered. In other words, we claim if the State did not give us inspection, if they did not inspect our property, that we are not liable and the State has no right and should not ask us to pay for services not rendered.
62

The Court: Isn't it true your stipulation of facts here shows, prima facie at least, there was an inspection, by the issuance of the official certificate?

Mr. Chase: Not in the face of our specific denial in the answer.

The Court: You reserve the right to deny this, and allege certain official acts were performed.

Mr. Chase: We admit we received the certificates; that would be a self-serving proposition if they were offered by the state. They mail us certificates as provided by the statute. That is not a proof on their part, against our specific denial. I make this point, that the reception by us of a certificate mailed to us by the oil inspection department cannot amount to an admission on our part that we got actual inspection.
63

The Court: But you admit on top of that that you went ahead and dealt in the oil, and sold and disposed of it as inspected oil?

Mr. Chase: No, we admit we received the certificate, and we admit that we used that certificate, so far as the oil inspection act designates what the use of a certificate shall be.

The Court: I think there is a prima facie showing here that there was an inspection. The motion is denied. Exception.

Mr. Stevenson: Plaintiff offers in evidence plaintiff's Exhibit A as part of the State's case, being the stipulation of facts.

Received without objection.

L. B. HANCOCK,

64 sworn on behalf of defendant, testified:

By Mr. Chase:

Q. You are one of the officers of the defendant in this case?

A. I am; secretary and treasurer.

Q. For how long a period?

A. Since the commencement of the business in July, 1904.

Q. Will you state in a general way the scope of your duties as such officer?

A. I have general charge of the business, general supervision of it.

Q. And does that extend to matters of detail in the operation of the business?

A. Yes.

65 Q. How long have you been in the oil business? I am speaking of kerosene and gasoline.

A. I have been employed in the oil business about 21 years.

Q. And have had continuous experience in that business for that period?

A. Yes.

Q. Will you give a general description of the physical location and arrangement of your plant there in Minneapolis, in a general way, so the court will get an idea of the buildings, trackage, etc.

A. Our plant is located on the Great Western railroad in Minneapolis, and our tanks in which we keep kerosene and gasoline are situated diagonally across the street, across the corner from us on a separate lot. Outside of our

66 main warehouse is a brick pumphouse, and in that pumphouse is located steam pumps, and as the cars arrive on the railroad company's sidings they are spotted under certain unloading pipes, and the kerosene and gasoline is pumped directly from these tank cars into our storage tanks.

Q. Your office buildings, and buildings used in connection with that business, other than your storage tanks, are they located on the property owned by the company?

A. No, all of our buildings and tanks are located, I should say all our buildings are located on railroad company property, and the storage tanks are located on private property, but leased by us.

Q. Do I understand that the land on which your building is, in which the operation of your business is carried on, is leased by defendant from the railroad company?

A. From the railroad company.

Q. Do you lease from the railroad company any of the trackage or lands upon which any of the railroad company's tracks are laid? 67

A. No, we don't lease the tracks on which this kerosene and gasoline is from which this is unloaded.

Q. What line of railway is your plant on?

A. The Chicago Great Western.

Q. If you are familiar with the subject I wish you would state to the court the method or manner in which these various cars containing your product, or the product ultimately intended for your company, comes in on the Chicago Great Western, how you get it, what the whole process is. I refer to kerosene and gasoline.

A. The material is all received by us in tank cars. The railroad company switch to our plant, usually, some time between 10 and 12 in the morning. They bring the cars over from what they call their East Side yards, and as they 68 find it convenient, spot them on these unloading tracks. After they have been spotted Mr. Danielson goes to the car, takes a sample out of the car, takes it into the warehouse and tests it. After testing the material he goes to the office and obtains from one of our clerks up there the record as to what the cars contain. This record, of course, is taken from the invoices we received from the refiners, and after he has ascertained that the material is correct according to the billing, and the proper tests and proper quantity is in the car, and after the inspector has been notified, he proceeds to unload the car. He pumps it through the steam pumps into our storage across the street.

Q. During the period covered by this action, that is, from February 1st, 1913, down to April 25th, 1915, what were the number and approximate capacity of your stor- 69 age tanks?

A. We have, or had at that time, eleven storage tanks for kerosene and gasoline. The total capacity, without figuring it up, would be approximately 500,000 gallons.

Q. I will ask you whether or not during that time certain of those tanks were used or set apart for gasoline, and other certain of the tanks set apart for illuminating oil?

A. Certainly.

Q. I will ask you whether or not during that period, referring now to the tanks set apart for gasoline, whether certain of those tanks were set apart and used, as a general proposition, each tank by itself for gasoline of certain specific gravity?

A. Yes, certain grades; there were certain tanks for certain grades.

Q. I will ask you whether or not it was customary, or

70 the usual custom, in unloading gasoline from the tank car, to unload this gasoline from the tank car into a storage tank at that time either designated for the same specific gravity of gasoline, or at that time containing the same specific gravity of gasoline?

A. Certainly, there is a certain tank for each grade.

Q. After this oil and gasoline was pumped into the storage tanks what was the general method pursued relative to drawing it off into the receptacles in which it was shipped and sold to the ultimate consumer?

A. Our storage tanks are located on higher grounds than our buildings, and all this material comes back to our buildings by gravity. It is distributed in two ways: First, through tank wagons delivering around the city, and then on our shipments the material runs back into one of our buildings and is filled into barrels or cans, packages
71 of different kinds and shipped out.

Q. Do I understand that in drawing out of the storage tanks you have a pipe coming from each storage tank down to the, we will say, the shipping room of your plant, and that you can draw out there in the shipping room from each storage tank as you please?

A. Certainly.

Q. Such oil as you may desire?

A. Yes, sir.

Q. In other words, by opening up a valve in the shipping room you can draw from any one of the storage tanks at will?

A. Yes, sir, we have pipes in each tank.

Q. I will ask you where you draw the oil or gasoline from the storage tank through the medium of the ship-
72 ping room outlet and put it into receptacles other than tank wagons, into receptacles such as barrels or other forms of receptacle for sale, is there any inspection by anybody of the oil thus drawn out of the pipe leading from the storage tank at the time this oil or gasoline goes into these barrels or half barrels or casks?

A. Do you refer to state inspection?

Q. No, by anybody.

A. No, no inspection.

Q. Are all casks, barrels or receptacles of any form or character whatsoever into which this oil is put for sale to the ultimate consumer, are those barrels or receptacles branded?

A. They have been branded by us.

Q. I am at all times referring to this period between February 1st, 1913, and April 25th, 1915; were they branded, all of them?

A. To the best of my knowledge they were branded.
Q. Who did that branding? 73
A. Our Mr. Danielson.
Q. To your knowledge were any of those receptacles ever branded by any employe of the state oil inspection department?
A. I don't think so.
Q. To the best of your knowledge was any branding whatsoever done in your plant, or in connection with the products you sold during that period, by the oil inspection department, or any of its employes?
A. No branding done by them that I know of.
Q. I understood you to testify, in all cases the actual physical manual branding was done by your employes entirely?
A. Yes, sir.
Q. Now, state how this product is purchased, that is, 74
I mean how the product in controversy in this action, the oil and gasoline, was purchased by the defendant in this action; I mean the terms and conditions under which it was purchased. Did you purchase from people inside, or outside, of the state of Minnesota?
A. As a rule everything was purchased outside of the state of Minnesota.
Q. And from refineries and concerns outside of this state?
A. Yes, sir.
Q. On what terms was it purchased? I mean by that, was it purchased at a price f.o.b. Minneapolis, or at a price f.o.b. at the place of shipment, the refinery, wherever it was?
A. In nearly all cases f.o.b. refinery.
Q. At a price f.o.b. refinery? 75
A. At a price f.o.b. refinery.
Q. Who paid the freight?
A. The Pure Oil Co. paid the freight.
Q. Your bills of lading showed who as consignor?
A. The refinery as consignor.
Q. And the defendant as the consignee?
A. Yes, sir.
Q. That was the general rule?
A. That is right.
Q. You have testified, I believe, that the inspection of this product you handled during this period was made by one of your employes, Mr. Danielson; that is, that Mr. Danielson took tests as to the gravity of the gasoline and kerosene?

76 A. In all cases.

Q. Will you state what the object and purpose of that inspection by your employe was?

Objected to as irrelevant and immaterial.

Mr. Chase: I think its materiality will come later on; if not it may be stricken out.

A. To ascertain if the material was in accordance with that which we had purchased.

Q. I will ask you whether it would be necessary to obtain the gravity of the product in the tank car for practical purposes before proceeding to unload that car?

A. Absolutely necessary.

Q. Why?

A. In order that we might know if it was kerosene or gasoline.

Q. I will ask you whether or not it would be necessary
77 to ascertain the gravity of that product before unloading, in order to know in which one of those tanks to pump that into?

A. Yes, sir.

Q. Are you able to state from your experience in the oil business, as that term is generally used, whether or not a general custom has prevailed in this immediate community, meaning thereby, Minneapolis and St. Paul, for a number of years, whereby the consignee of a tank car full of illuminating oil or gasoline reserves the right and exercises the right of rejection of that car provided the test made by the consignee indicates that the car does not come up either in quality, or if the deficit is to an appreciable extent, in quantity, with the invoices; are you able to state whether such a custom does exist?

78 A. I am not able to state as to other companies, but I am able to state as to our own company, we always reserve the right to do that.

Q. Have you exercised that right during the period covered by this action?

A. I think we have.

Q. I will ask you whether or not it occasionally happens that a tank car received or consigned shows upon inspection by your employe an appreciably less quantity of product than that for which you have been charged by the invoice? In other words, whether it frequently happens your cars consigned to you arrive short in the contents?

A. You want to know if we reject them?

Q. No, I want to know if it frequently happens such is the case?

A. Naturally.

Q. I will ask you whether or not all of the oil and gasoline involved in this suit was purchased by this defendant at points outside of the state of Minnesota and shipped to this defendant from points outside of the state? 79

A. With a very few exceptions.

Q. I will ask you whether or not the oil and gasoline involved in this suit that was purchased by this defendant was purchased outside of this state?

A. All of it was purchased outside of the state.

Q. Are you able to state from your experience of some 20 odd years in the illuminating oil and gasoline business whether or not a gravity test, solely, is any indication of the quality of the product, referring now to gasoline?

Mr. Stevenson: Objected to as irrelevant and immaterial, for the reason that a gravity test, solely, is not the state test as to gasoline. That is, the instruments the state is required to use do not indicate solely specific gravity. It 80 results in specific gravity, but temperature is included. You cannot get the specific gravity without taking the temperature. If the witness understands temperature is included in the true specific gravity I have no objection to the question.

A. Yes.

Q. You may state.

A. It is not a true indication of quality.

Mr. Stevenson: We move to strike out the answer as not responsive. The question is whether it is any indication of quality.

The Court: The motion is granted as not responsive. You may answer whether it is any indication.

Q. State whether or not it is any indication of quality, and if so, to what extent? 81

A. It is an indication of quality on gasoline that is properly manufactured, but it is no indication of quality on gasoline that is not regularly manufactured or refined.

Q. Will you state whether or not, referring now solely and simply to gasoline, it would be possible to ascertain, solely from a gravity test, whether the product so tested was what you would call a straight-run unblended product, or a product produced from the blending of a low grade oil such as kerosene with a high volatile high gravity gasoline?

Objected to as irrelevant and immaterial, it not being shown, first, that any of the gasoline involved in this action is anything except the regular distilled gasoline, and therefore it is on an immaterial issue, so far as the record now shows, or so far as the pleadings show.

The Court: Do I understand this is an attempt to im-

82 peach the exercise of the police power of the State?

Mr. Chase: We claim, under the affirmative defense, we have a right to show just exactly the practical result of the inspection of gasoline, that we have a right to show, and offer testimony here to show that the inspection of gasoline by simply taking the gravity test does not in any way subserve the ordinary ends of the police act, or an inspection act; that it does not in any way insure to the ultimate consumer quality, and serves no practical, useful or beneficial purpose.

The Court: Of course, that is a very severe arraigning of the law. To those of us who have had the misfortune to buy, lately, gasoline for our automobiles, we know gravity has much to do with the price, and this may be a legitimate way of protecting the public against the selling of low grade gasoline as high grade.

83 Mr. Chase: That is what we are attempting to show, it does not do that; that is what we are offering to show in this case, it doesn't do it.

The Court: In other words, you are attempting to show that somebody by dishonest methods can beat the statute?

Mr. Chase: We are attempting to show that the test prescribed by the law, for which this defendant is being charged inspection fees, does not subserve any practical purpose, so far as the ultimate protection of the public is concerned. We are not attempting to show in this case that any particular person is guilty of any particular violation; we are simply attempting to show that that particular test alone does not perform the function that it was evidently intended to perform and cannot perform for reasons we will show.

84 Objection sustained. Exception by defendant.

Mr. Chase: We offer to show by this witness that, so far as gasoline is concerned, that a test thereof, made solely by ascertaining the specific gravity thereof, would not enable the person making the test to determine whether the product so tested consisted wholly of what is generally known as a straight-run unblended, unadulterated product, or whether the product so tested consists of a blending or mixture of a low or ordinary grade of kerosene oil with a gasoline product of high specific gravity, commonly known to the trade as casing-head gasoline, and that the gravity test would not be any indication of the quality, the gravity test solely, or the value of that gasoline product.

Mr. Stevenson: Objected to as irrelevant, inadmissible under the pleadings, and assuming facts and conditions

not proven.

85 Objection sustained. Exception by defendant.

Q. In view of your experience in this business I will ask you if you know of a test that can be given gasoline that will be or will furnish a true and accurate indication of the quality of that product, and will show whether it is a straight, unblended product, or unadulterated product, or otherwise.

Objected to as irrelevant and immaterial.

The Court: This is a preliminary question; he may answer yes or no.

A. Yes.

Q. You may state what that test is; what it consists of.

Mr. Stevenson: We make the same objection as before.

The Court: I take it this is directed at a test other than a test by specific gravity?

Mr. Chase: Yes.

86 Objection sustained. Exception by defendant.

Mr. Chase: We offer to show by this witness that the test commonly known as the distillation test, as applied to gasoline, will show and demonstrate whether or not said gasoline so tested is a straight product, or whether, on the other hand, it is a product produced by blending a straight, unblended, unadulterated gasoline with a petroleum product of lower gravity and quality, such as kerosene or benzine, and will show the percentage of each product so blended to make up the product tested.

The Court: In other words, that is a question of analytical chemistry?

Mr. Chase: Yes, distillation.

Mr. Stevenson: We make the same objection as to the last question above.

87 The Court: The objection is sustained. I don't think the question is whether the legislature has found the most effective test, so long as the test may be of value I think that is sufficient.

Q. I will ask you to state whether or not if a tank car full of gasoline was the product of the blending or mixing of a low grade kerosene with a highly volatile character of gasoline, such as what is known to the oil trade as casing-head gasoline, we will say on the 50-50 basis of blending or mixing, would a gravity test, solely, of that tank car of gasoline disclose that fact?

Mr. Stevenson: Objected to as irrelevant and immaterial, it not referring to any regular state of affairs in Minnesota.

Objection sustained. Exception by defendant.

CROSS EXAMINATION.

88 By Mr. Stevenson:

Q. You said some of your oil and gasoline, the inspection of which is involved in this case, was bought by you from others in Minnesota?

A. A few tank cars were purchased from other oil companies.

Q. That were in Minnesota?

A. After they were in Minnesota.

Q. About what area of grounds is covered by your buildings and plant in Minneapolis?

A. Including storage tanks?

Q. Yes.

A. In the neighborhood of half a block.

Q. You said all of your buildings except your storage tanks are located on the right-of-way of the railroad com-
89 pany?

A. On railroad company property.

Q. They are not on the right-of-way?

A. Not that I know of.

Q. There is no railroad track of the Chicago Great Western running through the property occupied by you?

A. There is one track.

Q. Is that a live track, or an industry track?

A. I don't understand what you mean.

Q. Is it a track that through trains run over daily?

A. No, a switch track.

Q. A switch to some other industry?

A. No, just to our industry.

Q. Then there are no railroad tracks upon your premises except those that serve your industry?

90 A. No, no railroad tracks except those that cars are spotted on occasionally.

Q. Those tracks are built to your industry, and are for the purpose of serving your industry?

A. You refer to tracks upon which kerosene and gasoline are unloaded by us?

Q. Yes, and from which you ship, over which you ship.

A. There was no railroad tracks on the property occupied by us on which we unloaded kerosene and gasoline.

Q. Are there any tracks on your property, or the property controlled by you, other than those that either bring in the commodity, or take out the commodity for you?

A. There is one track upon which we unload lubricating oil in cans; merchandise.

Q. That is alongside of your warehouse?

A. Yes, sir.

Q. That track serves no other industry but yours?

A. Occasionally.

Q. Do the cars go by your place and get to those? 91

A. No, they set back of us for containing cans and other things for other people.

Q. Who owns that side-track?

A. The Great Western.

Q. Who owns the side-track upon which the cars are put for unloading in your storage tank?

A. The Great Western.

Q. They built those tracks?

A. Yes.

Q. And you paid for them?

A. No.

Q. Did you have anything to do with the building of them?

A. No.

Q. Or with the use of them? 92

A. No.

Q. Do you have any traffic arrangement for your tank cars exclusively?

A. No.

Q. The railroad company brings in the tank cars and spots them in your yard adjacent to your storage tanks?

A. They don't spot them in our yard at all; outside of our yard.

Q. How do you move them to your storage tanks for unloading?

A. We have pipes out on this line belonging to the railroad company.

Q. You connect the tank car with one of those pipes that you have in the ground?

A. Yes, sir. 93

Q. Does the railroad company place these cars at the convenient points at which you want them for unloading?

A. They spot them where we can unload them.

Q. You don't move them yourselves?

A. No, except occasionally, of course.

Q. About how many cars a day do you get in the busy season?

A. Anywhere from two to ten.

Q. You said you paid the freight on the commodity?

A. Yes, sir.

Q. You pay the entire freight to the delivering carrier, the Great Western?

A. Yes, sir.

Q. These deliveries then were made to you in your yards as you have just indicated?

A. It is not in our yards.

Objected to as calling for a conclusion.

94 The Court: I think the answer may stand.

Mr. Chase: We move the answer be stricken out.

Motion granted.

Q. The only delivery that the company makes to you is the one you have just described, is it?

A. Yes, sir.

Q. Then, when you have unloaded the cars you notify the company to take the empties away?

A. Yes, sir.

Q. Do you get all of your oil and gasoline from the Great Western?

A. No, not all of it.

Q. When it comes over another road how do you get it in your tanks?

A. They have to deliver it to the Great Western for de-

95 livery to us.

Q. Do you pay your freight to the Great Western?

A. No, we pay that directly to the railroad bringing the freight in.

Q. The Great Western merely does the switching for the other railroad?

A. I don't know what their arrangement is; I suppose so.

Q. Those cars are left convenient for unloading at your storage tanks just like the cars that are brought in by the Great Western?

A. Yes, sir.

Q. What portion of the shipments come from other roads than the Great Western?

A. Very little; comparatively little.

96 Q. Now, a considerable quantity of the oil and gasoline involved in this action was delivered to you in St. Paul—you have a place of business here, do you not?

A. Yes.

Q. At which your tank cars are delivered to you?

A. Yes.

Q. Where is that?

A. Over on the West Side, I think they call it.

Q. What railroad company makes deliveries to that place?

A. The Great Western.

Q. You have storage tanks there?

A. Yes, sir.

Q. Similar to those in Minneapolis?

A. Yes, sir.

Q. Similar unloading arrangement?

A. Yes, sir.

Q. A package warehouse for barreling and canning?
A. Our warehouse here is not so extensive. 97
Q. It is similar?
A. It is much smaller; it is used principally for loading into tank wagons.
Q. You do some barreling here, do you?
A. No.
Q. The great bulk of your gasoline is sold in tank wagons anyway, I suppose?
A. It is delivered in tank wagons.
Q. Can you say what proportion is sold in barrels or receptacles other than tank wagons during the period covered by this action?
A. I could only guess at it.
Q. What is your best guess, for gasoline only?
A. 33 1/3 per cent might be filled into packages.
Q. What proportion of the kerosene is sold in packages by you? 98
A. About 90 per cent of the kerosene would be filled into packages.
Q. You say your purchases are made f.o.b. refinery?
A. Yes, sir.
Q. When do you pay your freight to the railroad company?
A. Some time after the cars are received.
Q. What notification do you get from the company they have cars ready for delivery to you?
A. Usually after they are on the track.
Q. It is usually on the track before you know they have arrived?
A. We know of their arrival when they are placed there. 99
Q. And do you sometimes divert cars from St. Paul to Minneapolis, and vice versa for delivery?
A. At what point?
Q. Either after they have arrived in the city, or before?
A. Before they have arrived we divert while they are in transit.
Q. Do you ever divert after they have arrived in one city?
A. Not very often.
Q. Occasionally?
A. I don't recollect of an instance of that kind.
Q. The tank cars are always unloaded into these storage tanks?
A. No, not always.
Q. If they are not unloaded what is done with them?
A. Diverted to North Dakota, or out to other stations

100 out of the state.

Q. Then you would report such shipments to the state oil inspector and ask for a refund in inspection fee, if they had been inspected?

Mr. Chase: If they were not inspected they were not taken into account by the inspector.

Q. Assuming they were inspected.

A. They were unloaded; anything received and kept here at Minneapolis was unloaded there, naturally.

Q. You have agreed to a certain quantity of oil and gasoline involved in this action; as to that quantity that Mr. Chase has stipulated as the quantity received by you there, it was all received in tank cars, and all received in your storage tanks?

A. Yes, I think that would be true.

Q. Did you ever during this period involved, reload a
101 tank car from your storage tanks and sell it in Minnesota?

A. We reload quite frequently, and sell principally outside of the state.

Q. You wouldn't say any of it was reloaded and sold in Minnesota?

A. There might have been a car or two.

Q. But that would be to fill an order just then received?

A. On a rush shipment, something like that.

Q. Where you couldn't divert a car that had just come in, but would have to embargo a car and use it for your own purpose?

A. Something of that kind.

Q. Do you divert those cars when they are in transit
102 from the refinery, to points outside of the state to fill orders that you have?

A. Yes, occasionally.

Q. You don't ask the refinery for permission to do that?

A. We usually notify them, or obtain their permission.

Q. You notify them after you make the diversion?

A. Sometimes we have agreements ahead of it for the diversion of the cars.

Q. But you would; having bought it f.o.b. refinery, consider you had the right to divert it as you please, don't you?

A. In buying we have an understanding with the refinery, that on account of our having various stations we are obliged to divert, and in other words have the understanding that the cars may be diverted.

Q. The refinery is anxious to get its tank cars back as

soon as possible?

A. Usually. 103

Q. And these tank cars are used solely in that traffic, I presume, in the oil and gasoline traffic?

A. Yes.

Q. Do you have any of your own?

A. One; it is not used for kerosene and gasoline, though.

Q. You said your employes attended to the physical act of branding the receptacles, putting the stencils on the oil and gasoline receptacles when you put any in those receptacles?

A. Yes, sir.

Q. Whose stencils were they that were used for that purpose?

A. I couldn't tell you.

Q. You don't know whether they were furnished by the 104 state?

A. I don't know.

Q. Do you know who asked to have that arrangement made with your company?

A. That is an arrangement that has been in existence ever since I have been in business.

Q. You don't know the origin?

A. The original branding was done by the inspectors.

Q. You don't know the origin of the custom with your particular company?

A. I do know when we first had our materials purchased we purchased our materials in barrels; when we first started our business the inspector did the branding.

Q. As your business grew you asked permission to affix the stencils yourself if the inspector would leave them 105 there all the time?

A. I think not.

Q. Do you know Mr. Kelly, who used to work for you?

A. Yes, sir.

Q. What were his duties?

A. He has been shipping clerk.

Q. Work Mr. Danielson now does?

A. No, Mr. Danielson attends to the unloading of the cars and filling the barrels with kerosene and gasoline.

Q. Mr. Danielson had the task of filling the cans and barrels?

A. Yes, sir.

Q. And shipping them out?

A. He attends to that partly.

Q. You don't claim that your employes misbranded any of the oil or gasoline, do you?

106 Objected to as immaterial and incompetent under any issue.

Objection overruled. Exception by defendant.

A. Not to my knowledge.

Q. And they used the proper stencils in accordance with the certificate of inspection you had for the particular storage tanks or the contents of the tanks?

Same objection. Same ruling. Exception by defendant.

A. We paid no attention to the certificates; such branding as was done was done on our own inspection.

Q. Then you branded the commodities according to your own inspection?

A. Yes, sir.

Q. You used the stencil that stated it was state inspection of a certain test, didn't you?

A. I think Mr. Danielson can answer that better than
107 I can.

Q. You didn't have your own stencils, did you?

A. We did at one time, we had a stencil we purchased ourselves.

Q. Would it be just like the state stencil?

A. Yes, I think so.

Q. And you don't know what specific gravity, or what fire test, was put on the receptacles, with reference to the state's inspection?

A. We branded according to our own inspection.

Q. Did your own inspection differ from the state's inspection?

A. Yes, because it was not inspected?

Q. Did your inspection differ from the state's certificates?

108 A. Yes, sir, every time.

Q. In what respect? You inspect at a lower test?

A. Maybe; I don't know just how those certificates were made out; if they were made from our inspection, our tests, then they would agree.

Q. You have made the statement now they were different; wherein were they different?

A. In the case of kerosene the certificate would state the fire test to be a certain amount, a certain fire test, and our branding would be according to what the goods actually were.

Q. What would actually be the difference; would the fire test of the state be higher, or lower, than the test at which you sold?

A. I think the certificates would show you any kind of gravity, or fire test, whereas ours were made as nearly actual as possible.

Q. Would you know the state stencils if you saw them?
A. I don't think so; you mean those supplied by the 109
state?

Q. Yes, and whether the stenciling you put on your package was the same reading matter as is contained on the state stencils?

A. I am not very familiar with that.

Q. Do you know what you did stencil on your packages of kerosene, how it read?

A. No, I couldn't say that.

Q. What more does it state than the fire test and gravity test on kerosene?

A. That is all, to my knowledge.

Q. I understood you to say early this afternoon that you put the same quality of kerosene into a storage tank; you didn't mix your qualities of kerosene in the same tank?
110

A. That is correct.

Q. The quality would be the same, substantially, when it came out of the tank as it was when it went in, wouldn't it?

A. Yes, sir.

Q. Did your inspector make more than a fire and gravity test of kerosene when it went into the tank?

A. He only made the gravity test.

Q. What fire test did you put on to your packages of kerosene?

A. I presume 120, or above; I believe that is the way it reads.

Q. There wasn't any kerosene put into those tanks that were not as much as 120, was there?

A. Not to my knowledge.
111

Q. Were any of the state inspector's certificates of approved kerosene ones that showed any poorer test than 120 fire test?

A. Not that I know of; I haven't examined them.

Q. Then your statement a while ago that the stencil you placed on your packages was not according to the state inspector's certificate, was not correct, was it?

A. I referred to gravity; I am not posted as to what his certificates showed. I know we branded as nearly as possible to the gravity of the material.

Q. The gravity was all you kept track of?

A. That is all the record we had.

Q. Of your gasoline and kerosene?

A. Yes, sir.

Q. That is your only grading in putting the tank car

112 contents into the different storage tanks?

A. We made some other tests occasionally.

Q. That was the general test?

A. Yes, sir.

Q. The usual or only test?

A. In the majority of cases.

Q. Were the packages of gasoline you sent out stencilled with any different gravity than that shown by the state oil inspector's certificates?

A. I think so.

Q. Were they put out as being higher contents than he certified the contents of the storage tanks to be?

A. They were put out as nearly as possible to conform with the actual tests.

Q. That is, the test your own inspector had made?

A. Yes, sir.

113 Q. Was it higher, or lower, than the state inspector's test?

Mr. Chase: Objected to as assuming something not in evidence. There is no evidence that the state inspector has taken any test.

Mr. Stevenson: Put that "lower" than the state inspector's certificate.

A. I have not compared the two; I know I paid no attention.

Q. You don't know whether they were the same, or different?

A. I don't know whether they were the same, or different.

Q. Then you don't know that the stencilling you put on your gasoline packages was not in accordance with the

114 state's inspection? In other words, so far as you know the stencilling on your gasoline packages was the same as the state inspection certificate showed the contents of your tanks to be?

A. I know that the tests made by the inspector were not right at all times.

Q. That is, they were not the same as your inspection?

A. Yes, sir; in fact, there was no tests made, consequently they couldn't be the same unless they were copied from our own inspections.

Q. You say there were none made; still you say they were different. They couldn't be alike if the certificate was made out as a matter of guesswork?

A. They must have been made out from each other.

Q. The gasoline that would be drawn out of your storage tanks for packages would be substantially the same gravity when it came out as when it went in?

A. Practically so.
Q. How old are you? 115
A. 43.

RE-DIRECT EXAMINATION.

By Mr. Chase:

Q. Why do you say that you paid no attention to the state inspection certificate when branding receptacles into which you were drawing certain of that product from the storage tanks; why do you pay no attention to the inspection certificates?

Objected to as irrelevant and immaterial.

The Court: He can state to the extent he has personal knowledge.

A. Because we desired to have it as nearly right as possible.

Q. Why wouldn't you get it right from the inspection certificate, relative to the particular specific gravity that 116
the certificate showed?

A. The practice of the inspector was not such he could get it right.

Q. What do you mean?

A. It was not inspected.

Mr. Stevenson: Do you know that of your own knowledge?

Witness: No, I don't know it of my own knowledge.

Mr. Stevenson: We move to strike out the answer.

Motion granted.

Q. Can you state whether there was any appreciable quantity of tank cars of this product purchased from other companies in Minnesota during this period?

A. No appreciable quantity.

Q. How many would you say as your best estimate you 117
are able to give?

A. Possibly 10 or 15 cars.

Q. During this entire period covered by this action?

A. That would be the best of my recollection.

Q. And had those been inspected at the time you purchased them?

A. Not to my knowledge.

GEORGE B. FRANKFORTER,

sworn on behalf of defendant, testified:

By Mr. Chase:

Q. You are the dean of the chemistry department of the university of the state of Minnesota?

A. Yes, sir.

Q. And have occupied that position for how long?

A. I have been professor of chemistry and director of

118 the chemical laboratories in the University of Minnesota since 1893. I have been dean of the college ever since it has been organized.

Q. During your experience as professor of the chemistry department of the state university, and dean of the chemistry department have you had any experience with gasoline and illuminating oils in the matter of testing them for qualities of the product, specific gravity, etc.?

A. Yes, sir.

Q. Are you familiar with the subject, generally speaking?

A. Yes, sir.

Mr. Stevenson: There is no question as to qualification. The qualifications of the witness are admitted.

Q. I will ask you whether or not a gravity test, solely, as applied to gasoline, gives any definite practical evidence
119 as to its quality?

Objected to as irrelevant and immaterial.

The Court: He may state if it gives any evidence.

A. Little or none.

Q. I will ask you whether the gravity test, solely, as applied to gasoline, gives a definite test as to its what might be termed combustible character, or explosive character?

Same objection. Overruled.

A. I assume you mean when mixed with air under normal conditions?

Q. Certainly.

A. Only very relative.

Q. You may state why the gravity test, solely, as applied to gasoline does not result in giving true evidence or indication as to the quality of the product.

120 A. There is a large group of organic compounds known as hydrocarbons. These hydrocarbons exist in three states of matter, the gas, the liquid and the solid. Gases are included in ordinary natural gas, and in the artificial gas, illuminating gas. The liquids include the very light boiling liquids which are commonly known as gasoline, scores of them, the heavier liquids, known as kerosene or burning oils, the still heavier liquids known as lubricating oils, and finally the third form, the solid, which includes ordinary paraffin. These liquids included especially under gasoline vary in their properties, in their specific gravity and in their boiling point. The higher the specific gravity, with the Baume scale the less its weight, as compared to water, and the lower the specific gravity of this liquid the higher will be the boiling point.

Some of these gasolines will boil at the ordinary temperature. Pour pentine in your hand and it will boil;

others have a still higher boiling point, and others have a boiling point around the boiling point of water. Then above that we have higher ones which are ordinarily included in the burning oils, and kerosene, and of course, still higher than that the various grades of lubricating oils. These gasolines are made up of a large number of what we call isomeric forms of hydrocarbons. By mixing these we can raise the specific gravity and raise the boiling point a little, so the quality of the gasoline is determined by the specific gravity, but really what we do is to determine the boiling point, for the boiling point, the vaporizing point of gasoline is the important thing. We cannot determine the vaporizing point, the flashing point, if you please, we use in the burning oil because it is so low, it is somewhat below the temperature of the room here, and we have eliminated that in gasoline, and simply take the specific gravity test in order to determine approximately its boiling point or its specific gravity; specific gravity has nothing to do with it specifically except to tell whether the boiling point is high or low; whether it vaporizes readily or not. Commercial gasoline varies widely; with the specific gravity of probably 86, I am not familiar with what the companies are selling, but I should say probably 86, that represents this light boiling or very light boiling liquid. We can take another grade of a little more complex molecular structure, with a specific gravity of, say, 50 on the border line between gasolines and kerosenes, we can take those two and put them together, suppose we take those two oils, one we will take 80 and another of 50; one is a high grade gasoline and the other a very low grade of gasoline; we mix in equal parts, having a specific gravity of 65; that is a fair grade of gasoline, yet that gasoline represents really a grade of kerosene mixed with a high grade of gasoline. 121 122 123

So the specific gravity, you see, really does not tell us anything very definite. The boiling point would be the only way, the distillation test would be the only way to absolutely tell what that gasoline was made of.

Q. Now, then, right along that point. Suppose in the use of your gasoline, either in the tank for running a stationary engine, or in the tanks formerly more in use in automobiles than now, somewhat—that is, not the rear tank, but the forward tank, where there was an air vent from the tank,—suppose you used, on the one hand, a straight-run gasoline,—and by straight-run gasoline I mean a gasoline that has not been mixed or blended with any inferior quality of the same class of product,—would you lose as

124 much of that gasoline at a given temperature, take it, say, during the summer, by evaporation as you would lose with a blended product showing the same specific gravity?

Mr. Stevenson: Objected to as irrelevant and immaterial. Further, it has not been shown any blended product is a matter of ordinary commercial traffic in Minnesota.

The Court: I cannot understand where the blended proposition is involved in this case. As I have listened to the witness' testimony I have gotten the impression that the difference between the kerosene and gasoline is one of specific gravity.

Witness: Of a specific gravity, but the boiling point is the important thing.

The Court: That is what you call a more definite test.

Q. Is there any difference between what you would
125 denominate kerosene at a specific gravity of 48 or 49, and gasoline with a specific gravity of 74 to 76, as regards efficiency for which gasoline is ordinarily used?

A. There is.

The Court: The witness said gasoline at a specific gravity of 50 is really low grade gasoline, or a high grade kerosene.

Witness: There must be a line between kerosene and gasoline. Gasoline, kerosene and lubricating oil are made from crude petroleum by a process of distillation. They distill the gases out of the light boiling liquids and gasoline; they reach a specific gravity of 49 or 50, and at that point they change from gasoline to the burning oil.

The Court: In other words, where a fair grade of gasoline is required, for instance, in an explosive engine, that
126 by taking the very low specific gravity or grade of that, you would get poorer results than you would from the higher grade specific?

Witness: Yes, because you wouldn't get vaporization.

The Court: You wouldn't get what we call good combustion?

Witness: Yes, sir.

Q. Wouldn't that be true as to a blended product of say 50-50, that is, one-half kerosene of, say, 47 specific gravity, to 50, with a high grade gasoline, that you wouldn't get as good results, practically, from that product showing, we will say for illustration, 65 specific gravity as you would get from the clear run gasoline of the same specific gravity?

Mr. Stevenson: Objected to as irrelevant and immaterial, assuming a state of facts not proven in Minnesota.

The Court: It is a theoretical question, as far as this

case is concerned; I think he may answer.

Exception by plaintiff. 127

A. If we should put a blend—and perhaps I should explain a blend. It does not necessarily follow that an oil company to sell a blend would have to take a low grade and high grade to blend it. I have spoken of this distillation; suppose the Standard Oil Company should begin distilling, and distill from their gasoline, have to distill from their kerosene; that is what they used to do; when there was no demand for gasoline they distilled gasoline into kerosene; suppose gasoline was of more value than kerosene; suppose they run pipes and run some ordinary kerosene into the gasoline that would be called a blend because it had the same boiling point; not necessarily that companies actually take kerosene and gasoline and mix them. But then a blend such as that at first might really sell for a short time as a straight-run, but that lighter oil 128 would pass off more rapidly than the heavier, and later you would have the same, a very poor grade of gasoline, or almost kerosene, so it wouldn't be as good as a straight-run.

Q. You have testified a gravity test was not always indicative, applied to gasoline, of its combustibility when mixed with air; now, in what respect would that fail to give an indication as to the combustibility of the gasoline, or the temperature at which it would ignite. Suppose you had a gasoline which would run 65, and you have a product of 65 gravity, composed of a blending of a higher gasoline with a low grade kerosene that would make a 65 gravity, would they both ignite at the same temperature?

Objected to as irrelevant and immaterial, assuming a condition of the market in Minnesota that is not proven.

The Court: He may answer subject to the objection. 129

A. That would be the same as asking whether the kindling point of gasoline would be the same as the kindling point of kerosene; naturally it would be lower, kerosene having a higher kindling point than the gasoline. It will not oxidize as readily.

Q. It would take a higher temperature to explode the blended product than the straight-run product?

A. It probably would, yes.

The Court: Do you mean by that it is not so dangerous in its explosive qualities?

Witness: No, I wouldn't put it that way.

The Court: Take for instance in a gasoline kitchen range; there is where we get so many of our accidents, would the blended product, such as has been suggested, be more or less dangerous in character than the straight-run?

130 Witness: I should say the blended product would be more dangerous than the straight-run, because you have some of the very high boiling liquids which would vaporize very readily; on the contrary, you have some products which vaporize with more difficulty, and which would vaporize and mix with the air and become explosive.

Q. Although they both might show the same specific gravity on the gravity test?

A. Yes, sir.

Q. I will ask you whether or not you are acquainted with what is commonly known in the trade as the distillation test for gasoline?

A. I am.

Q. I will ask you whether or not, in your opinion, that is the only accurate test as applied to gasoline for the purpose of ascertaining its quality?

131 Objected to as irrelevant and immaterial.

Objection sustained. Exception by defendant.

Q. I will ask you whether or not the true quality of a given grade of gasoline can be ascertained in any other manner than by the distillation test?

Same objection as last above.

Objection sustained. Exception by defendant.

Q. I will ask you whether the quality of gasoline, for practical commercial purposes, the same as now used, can be ascertained with accuracy and reliability by any other test than the distillation test.

Same objection. Same ruling. Exception by defendant.

Mr. Chase: We offer to prove by this witness that, relating solely to the matter of gasoline, that the so-called distillation test is the only test by which the quality (using
132 that term with regard to the ordinary commercial uses), of the product gasoline can be fairly and definitely and materially ascertained and determined?

Same objection. Same ruling. Exception by defendant.

Q. Do you know of your own personal knowledge whether there is any appreciable quantity of gasoline, so-called, being sold in this state that consists and is made up of this blending and mixing, or is the result of a product obtained from blending and mixing?

A. All I can say is I have made a great many tests, and I find a good many of the gasolines, I don't know what quantity would be in the state, but a good many which are blends, that is, some very light boiling liquids, and some heavier, that would be really classed with kerosene.

Q. In what way do you get the product or from what

sources does the product come you have submitted to those tests? 133

A. I don't understand your question.

Q. Where did you get those samples that are submitted to you for these tests?

A. We have a course in this work in the university; we buy them in the open market; I think the last we bought was from the Standard Oil; I am not sure but we bought some from the Pure Oil, but we do make these distillation tests.

Q. And have you found that blended condition to any appreciable extent in your tests, or has it been a rare occurrence, taking the tests as a whole?

A. The ordinary gasoline, the gasoline around 63 to 65, usually contained a good deal of the heavier oil, quite a considerable quantity; the heavier oil will run down probably in the 50's, probably 50 to 53, on the border line of 134 the higher graded burning oils.

The Court: Isn't it true that kerosene and gasoline come from the same base, and simply a difference in refining?

Witness: A difference in refining; a different boiling. All hydrocarbons test a difference in the boiling point.

The Court: How can it be told then whether gasoline of 60 or 63 degrees specific gravity is a blend, or whether it is simply a degree in the refinement?

Witness: Distillation is the only test.

CROSS EXAMINATION.

By Mr. Stevenson:

Q. You say that gasoline and kerosene are both the product of distilling crude petroleum oil?

A. Yes, sir. 135

Q. Those products are distilled in the ordinary way of distilling, by applying heat to the crude oil?

A. Yes, sir.

Q. And the first that passes off in the vapor is the higher test gasolines?

A. The first that passes off from the crude petroleum, unless it has been exposed to the air, is the gas. They drive that gas off and put it under the retort and use that for heating.

Q. That is not used for commercial purposes?

A. No, sir, it is not used in the market at all.

Q. Then you begin to get your gasolines of the higher specific gravity, that is, the higher Baume test?

A. In the commercial world I think they would call it gasoline; we call it petroleum ether; it is a very high grade

136 of gasoline, and is used for dry cleaning, things of that sort.

Q. Ordinarily they keep on applying the heat to the still and run all of the distillation off until they get up to a certain temperature, or until they get the product to a certain specific gravity and they cut off at that point and call all that product a certain specific gravity of gasoline?

A. Yes, if they were making a general gasoline they would do that, but in making the different grades of gasoline they would cut it off at a certain point; they would cut up the gasoline from the maximum to the minimum, and cut it up here for the high grade, and cut it here for the low.

Q. In the ordinary distilling of commercial gasoline do you know at what temperatures they make the different cut-offs between the different grades of gasoline?

137 A. I don't at the present time. That changes with the demand; the Standard Oil changes it every year, I believe.

Q. Then, after the gasolines, that is, the liquids that are called commercial gasoline, when they quit getting gasoline what is the next thing they get?

A. Burning oil and kerosene.

Q. Then where does the naptha and benzine come in?

A. Naptha and benzine would be included in gasoline. I have included them in the ordinary term of gasoline, because there are 20 or 30 different names for these various products, for the volatile products which you might call, in general, gasoline.

Q. That is, chemical names?

A. Yes, sir.

138 Q. But not commercially known?

A. I believe naptha is used as a common term; it is a very crude term. Petroleum ether is used in a less common way.

Q. Do you know where the line is drawn commercially between gasoline and naptha?

A. Not at the present time, no, I don't think there is any line drawn between them.

Q. The naptha comes next to the gasoline, does it, in specific gravity?

A. Naptha should belong, probably, about the middle of the gasoline; it would not be included in the light gasoline, nor in the heavier.

Q. What do you call naptha, what specific gravity?

A. Naptha will vary almost as wide as kerosene; we have naptha in the laboratory that will run about 70 to 72; sometimes we get it heavier than that; it is not a defi-

nite product.

Q. What do you call the kerosenes, up to what specific 139
gravity?

A. The same thing is true of kerosene; kerosene perhaps would begin around 48 or 49, and then run down to the light lubricating oil would have a specific gravity perhaps of 38 or 40.

Q. Then the difference between the gasolines and the benzines and napthas and kerosenes is merely at the point where the distiller cuts off the distillation and calls it something else?

A. Very largely, yes; they are simply commercial terms for certain grades of oil.

Q. The refinery sells its gasolines on the specific gravities?

A. He ought to.

Q. He does; he grades it on the specific gravity when he 140
distills it, doesn't he?

A. I say he ought to.

Q. Do you know whether he does, or not, in actual practice?

A. In a blend of course he would have the specific gravity, in a way, he would grade it on the specific gravity.

Q. Don't you know the refiner in distilling makes his cut-off according to the specific gravity of his product, and whether he makes it according to the temperature, with the crude petroleum?

A. I wouldn't be sure.

Q. You say that a blended gasoline will not give as good service because the lighter gasoline would pass off first?

A. The tendency, I said, yes, sir.

Q. Is that true with the use in automobiles? 141

A. I don't know; it ought to be true; theoretically it is certainly true.

Q. If the outlet pipe from the gasoline tank to the carbureter was at the bottom of the tank where it usually is, and the flow is by gravity would the lighter oils pass off?

A. Of course, it wouldn't give quite as much heat, it wouldn't be quite as efficient but you wouldn't get a vaporization of the lighter oil because there wouldn't be any chance for it, but if you have a blended oil exposed to the air the lighter oil will pass off.

Q. Then you don't mean your answer to apply to the practical use in automobiles?

A. No, sir.

Q. The very movement would keep the thing mixed?

142 A. There would be no chance for it to escape.

Q. And the mechanical mixture would overcome any tendency to separate?

A. Yes, sir.

Q. You are familiar with the requirements of the different states as to testing gasoline, are you?

A. No, I can't say that I am.

Q. Do you know of any state that requires the boiling or distilling test for gasoline?

A. No, I only know three years ago I was called before the legislative committee here and the whole thing gone over, and I made some tests for them, boiling-point tests, and pointed out the fact that the gravity test was not reliable, and that the boiling point test was.

Q. This blending of gasoline has developed in the last four years?

143 A. Yes, sir.

Q. You say the blending may result from not cutting off the distillation soon enough, that is, distilling some of the heavier distillation in with the distillation that came off first?

A. I said it might be that or the companies would blend it; it might be either way, the companies might blend it or it might be done in the process of distilling.

Q. If it is done in the process of distilling you still call the product straight-run gasoline?

A. No, I don't think that.

Q. Do you know whether it is so-called in the trade?

A. No, I don't.

RE-DIRECT EXAMINATION.

By Mr. Chase:

144 Q. I understood you to state that no particularly injurious result would be obtained from using a blended product in an automobile where there was probably no possibility of any evaporation, and where the product was constantly being stirred up, thoroughly blended by the operation of the car; would that apply to cases where the product was used in operating stationary engines?

A. Of course, if you have a blend, and that gasoline is enclosed it is enclosed in a tank and you are feeding from that tank by means of a supply pipe there will be no opportunity for the lighter gasolines to escape; that blend would pass into the carbureter as the blend, but if that blend were exposed to the air, naturally the lighter oils would pass off first and you would have the heavier oil behind.

Q. As a matter of fact, with the blend would the tend-

ency be more to clog the carbureter than in using a straight-run product? 145

A. I wouldn't quite use the term "clog the carbureter," but you would get carbon in your cylinders much more readily than with the straight-run.

Q. It would materially affect the efficiency of the operation of the car?

A. Yes, sir, it would.

By Mr. Stevenson:

Q. That would depend largely on the type of carbureter and the adjustment of it, wouldn't it?

A. If we had a heavy oil and a light oil, and adjust your carbureter for the light oil, you would have difficulty in burning the heavier oil, it would ignite with much more difficulty, and I am quite sure you would have a determined tendency to form carbon in the cylinder.

Q. You could burn kerosene after you got the engine 146 heated?

A. Yes, sir.

Q. That will clean out your cylinders?

A. That is for loosening up the carbon.

Adjourned until February 4, 1916, at 10 a. m.

GEORGE T. WALKER,

sworn on behalf of defendant, testified:

By Mr. Chase:

Q. You reside in the city of Minneapolis?

A. I do.

Q. What is your age?

A. 32.

Q. You are at the present time what is termed as the chemist for the Van Tilburg Oil Co.?

A. I am. 147

Q. Is that company operating in Mineapolis and St. Paul?

A. Minneapolis; we sell goods in St. Paul, but we have no branch here.

Q. Your head office is in the city of Minneapolis?

A. Yes, sir.

Q. How long have you been acting as chemist for that company?

A. A little over five years.

Q. What chemical course did you take?

A. I graduated from the University of Minnesota, where I took what they call the four-year scientific-academic course.

Q. Did that involve the study of chemistry through the regular four-year course?

148 A. Yes, sir.

Q. Did you take any post-graduate course after that?

A. I did not.

Q. And when you graduated did you immediately take this position as chemist for the Van Tilburg Oil Co.?

A. No, sir.

Q. What did you do before that?

A. I taught high school in Fergus Falls one year; took up a homestead about a year and a half, was chemist with the Minneapolis Drug Co. two years; was with the Minneapolis Medicine Co. for a few months and the International Stock Food Co. a few months, and then the Van Tilburg Oil Co. five years ago.

Q. During the past five years have you been engaged exclusively in testing and analyzing various petroleum products, including gasoline, kerosene, etc.?

149 A. I wouldn't say exclusively; I have done all their work.

Q. Are you familiar with the gravity test prescribed by the laws of this state under the oil inspection law?

A. I am.

Q. Are you familiar with the so-called distillation test?

A. I am.

Q. I will ask you whether or not you consider the gravity test required and prescribed by the oil inspection law of this state as applied to gasoline any indication, or a sufficient test to give any indication of the quality of the gasoline so inspected and so tested?

Mr. Stevenson: Objected to as irrelevant and immaterial unless it is confined to the gasoline sold and handled in the state of Minnesota as commercial gasoline?

150 Mr. Chase: I will amend the question to have it apply to gasoline as that product is known and sold for commercial purposes within this state.

A. The gravity test, take it alone, is no fair indication, no indication of any value, of the quality of the goods.

Q. Why not?

A. Because you can have two or three different grades of exactly the same gravity.

Q. Explain that more fully.

A. There are sold at the present time, and have been for some time past, at least three grades of gasoline here in Minnesota, that can be made of almost any gravity. There is one the base of which is known as motor spirits, and there is the straight-run gasoline, and there is the blended gasoline.

Q. What is motor spirits?

A. Motor spirits is a product produced from heavy

ends, heavy petroleum; oils heavier than gasoline, being a process of destructive distillation. 151

Q. At what specific gravity is that usually sold in this state for commercial purposes as gasoline?

A. When originally put on the market it was sold as a gravity of about 57.

Q. What is the case now?

A. That was sold for a little while but it was not very satisfactory and they took to mixing casing head gasoline to increase the gravity.

Q. Would the gravity test alone, applied to gasoline, that in your experience in the past three or four years has been sold in this state for commercial purposes, indicate whether the product to which that gravity test was applied was a pure run product, that is, one that hadn't been mixed, or blended, or adulterated, or whether it was a mixed or blended product? That kind of gasoline sold throughout 152 the state of Minnesota.

Objected to as irrelevant and immaterial, the witness not having shown himself competent to testify.

Q. How frequent and extensive are your tests, or have they been, during the past five years with the product handled by your company?

A. Up until the 1st of June last year I personally tested a sample of every car of gasoline and kerosene which they received for 4½ years.

Q. And their average receipts would be, in a general way, what?

A. Some days we didn't receive any; some days five or six cars.

Q. What would the average weekly receipts run?

A. I would say, if anything, ten cars a week. 153

Q. Have you during that period tested any other samples of gasoline other than that sold by your company?

A. I have occasionally tested samples brought in by our salesmen which were products sold by other companies; and I have tested for other companies at their request.

Q. And that has been in the past two or three years?

A. Yes, sir.

Mr. Chase: I now repeat the question.

Same objection. Overruled.

Witness: It would not give any indication as to which of the three kinds of gasoline were under consideration.

Q. What test, if you know, would give that indication?

A. The distillation test.

Q. Do you know of any other test besides the distilla-

154 tion test that would give that indication?

A. No test that is as definite. There are other tests that give some indication.

Q. Would the gravity test alone, applied to gasoline that has been sold and used commercially in this state as such during the past three or four years give a correct indication of the susceptibility to explosion when mixed with air, or of its explosive character?

Objected to as assuming facts not proved. Overruled.

A. It would not.

Q. Explain why not.

Same objection. Same ruling.

A. Because gasolines can be made and have been sold to my knowledge which are blended in such a way that although they may be of comparatively low gravity, when exposed at a high temperature they give off large fumes or

155 vapors.

Q. In other words, by a mixture of a high gasoline with a product lower you would get an explosion quicker, when that product was mixed with air at a lower degree of temperature, than you would with a pure gasoline, unadulterated or unmixed gasoline of the same or higher gravity?

A. I would have to modify the question slightly. An explosive danger is not so much a difference of temperature when it is mixed with air as it is inclined to evaporate and form a vapor.

Q. And the inclination to evaporate and form the vapor you speak of, if I understand you correctly, is greater in the case of a blended product you have spoken of than in the straight-run unblended product, is that right?

A. Yes, sir, that is correct.

156 Q. This testimony you have given relates to experiments and your opinion gained from your experience during the period of say the last three years?

A. I formed the opinion before that time; it includes that time; it applies more particularly to that time.

CROSS EXAMINATION.

By Mr. Stevenson:

Q. What other work do you do with the Van Tilburg Company than inspecting their petroleum products, or testing them?

A. I handle certain correspondence.

Q. Work in the office generally?

A. Until about two months ago I was in the laboratory all the time unless my duties carried me elsewhere.

Q. How much of the time each day did you spend in the laboratory?

A. Generally about nine-tenths of the day.
Q. What work did you do in the laboratory during that time? 157
A. My first duty, main duty, was to test these shipments; after that was done, other work.
Q. How much time did it take you to test ten cars a week?
A. It didn't take a great deal of time; it doesn't require a great deal of time. To make a distillation test as we usually do takes half or around three-quarters of an hour for each sample.
Q. You make only one test of each car?
A. Yes, sir.
Q. You say you tested about ten cars a week; how many of those were gasoline?
A. About nine out of ten cars are gasoline.
Q. You had never had any practical experience with 158
gasoline or kerosene oil before going with the Van Tilburg Company?
A. I had not.
Q. You say that the gravity test would not determine which of three kinds of gasoline the commodity was, that is, whether motor spirits, straight-run gasoline or blended gasoline?
A. Yes, sir.
Q. Does your company handle what is known as motor spirits?
A. We don't.
Q. Does your company handle what is known as blended gasoline?
Objected to as immaterial and not proper cross examination. 159
Objection overruled.
A. We do.
Q. What proportion of the gasoline you handle is blended?
A. Practically none in the summer, and probably 50 per cent or 75 per cent in the winter.
Q. The quantity handled in the winter is not more than ten per cent of the quantity handled in the summer, is it?
A. I couldn't give the proportions; it is a larger proportion than that; 25 per cent, perhaps.
Q. So that where you have nine cars of gasoline per week in the summer you wouldn't have more than two cars of gasoline per week in the winter?
A. I was figuring on an average when I said ten cars. We put through more than that in the summer.
Q. This commodity known as motor spirits is not sold

160 as gasoline at all in Minnesota?

A. When first put out it was branded "Motor spirits"; that has disappeared from the market; the same product is sold with quite a little blending, as gasoline.

Q. There is no such thing as motor spirits sold on the market in Minnesota?

A. Not under that name at this time.

Q. Have you any knowledge of your own as to whether anybody else, any other dealers, in Minnesota, handle blended gasoline than the Van Tilburg Co.?

Objected to as not proper cross examination, incompetent and immaterial.

The Court: He can show his familiarity with what he testified to. Exception.

A. I have from time to time tested samples of blended gasoline which were sent to me by other companies and
161 brought in by our salesmen from barrels branded with other companies' names.

Q. You don't know the extent to which they handled such commodities?

A. No, the number of those samples is small compared with the number I test for ourselves.

Q. About how many outside samples have you tested in the last four years?

A. I haven't any definite recollection. Perhaps a dozen.

Q. Those were not all blended gasoline samples?

A. Yes, generally when they are sent to me, because it is the question whether they are blended or not.

Q. What do you call blended gasoline?

A. Blended gasoline is any gasoline that is produced by mixing casinghead gasoline with some lower gravity
162 petroleum product.

Q. Did you hear Prof. Frankforter's testimony yesterday afternoon on that subject?

A. I did.

Q. Do you agree with him that a blended gasoline may be made at the refinery through the distillation without making a cut-off between certain qualities?

A. You can make a product with practically the same properties, although that is not in the trade called blended gasoline; that is improperly refined gasoline.

Q. Then the kind of gasoline that Professor Frankforter described as blended, which he said might be produced by the refinery, by not separating the high grade gasoline from the lower grade gasoline you would not call blended gasoline?

A. Not under the trade name. Of course, blending means mixing.

Q. Then the kind that he described as coming from the refinery in this way is not known as blended gasoline in 163
the market?

A. When we buy blended gasoline that is not what we mean by that term.

Q. Commercially that would be known as straight-run gasoline?

A. That would be straight-run gasoline.

Q. Considering the straight-run gasoline alone would you say that the specific gravity indicated its quality, relatively?

A. To a greater extent than is true taking gasoline generally.

Q. It does to a considerable extent, doesn't it?

A. Yes, to quite an extent.

Q. So much so that gasoline is bought and sold throughout the United States on specific gravity test, isn't that so? 164

A. We don't buy it that way.

Q. Do you know whether it is bought and sold that way?

A. I know some of it is.

Q. Don't you sell it that way?

A. We sell both ways.

Q. What other inducement do you hold out to the public in the sale of your gasoline than its specific gravity for the price you ask?

A. We mention what they call the dryness of the gasoline.

Q. Do you make a difference in price on that account?

A. We make a difference in price on some gravities, according to whether that gasoline is suitable for certain purposes or not, although the gravity is the same. 165

Q. That is, there are certain differences in gasolines that come from different regions, and one gasoline will be better for the specific purpose than another?

A. Yes.

Q. Do you have anything to do with the selling end of the Van Tilburg Oil Co.?

A. Not in connection with the gasoline and kerosene.

Q. Or the price of it?

A. No, sir.

Q. You know the Van Tilburg Company is the farthest in default with its state inspection fees in Minnesota?

A. I don't know the relative standing.

Q. But you know they are involved in a case with the State?

A. Yes, sir.

Q. Did you ever know of a 64 gravity gasoline, for in-

166 stance, being sold in Minnesota, generally, for less than a 60 gravity gasoline?

A. I have never heard of such a case.

Q. 64 test gasoline is invariably sold for more in the markets than the 60?

A. So far as I know, it is.

Q. And the same is true all the way up the scale, isn't it, on specific gravity?

A. Generally speaking, it is.

Q. That is, the lighter the gasoline, which means the larger number on the Baume scale, the higher is the price asked for the gasoline?

A. That is generally true.

Q. And so generally true that the exceptions are rare, isn't it?

A. I don't know of a great many exceptions myself.

167 Q. Even blended gasoline is sold with reference to its specific gravity, isn't it?

A. It is.

Q. Isn't it a fact this blended gasoline, when it is handled by a dealer, is sold to the consumer without the consumer being advised that it is a blended product? Isn't it put out and sold as what is commonly known as straight-run gasoline?

A. I presume it is; I am not posted as to that.

Q. You never heard of gasoline being sold by your company as blended gasoline, did you?

A. Not in the retail way, no.

Q. And the lighter the blended gasoline is, the more you charge for it?

A. We usually sell three grades which are three dif-

168 ferent gravities.

Q. And those are the only grades you do sell?

A. We sell two or three others in occasional cases.

Q. That are covered by some trade name or brand?

A. Yes, sir.

Q. But they are not sold with reference to their gravity at all?

A. No.

Q. The specific gravity indicates the lightness of the liquid?

A. Yes, sir.

Q. Doesn't that, generally speaking, indicate the tendency of the gasoline to evaporate?

A. The tendency of gasoline to evaporate won't follow the Baume scale, or any other specific gravity.

Q. Won't it relatively, or approximately?

A. You can only say it would if the gasolines were

manufactured in the same way, or from the same source.
Q. Wouldn't that be so as to all straight-run gasoline? 169
A. All from the same grade of crude oil; you could judge the amount of evaporation quite closely by the gravity, that is where they got started using the gravity.
Q. Wouldn't you say that generally and practically a 74 test gasoline would evaporate much more quickly than a 64 test gasoline?
A. 74 is higher than is practical, but say 70, about what is sold as high; I have seen in a great many cases samples of 70 that gave off vapor at a lower temperature—
Q. I am asking whether the 70 test gasoline would not form an explosive vapor quicker when exposed to the air than a 60 test gasoline will ordinarily?
A. A 70 straight-run will form vapors more readily than the 60 straight-run, and the 70 blended more than the 60 blended. 170
Q. So that relatively the specific gravity does indicate the readiness with which the liquid will evaporate?
A. It rather indicates the readiness with which it will begin to give off vapor. Commencing to give off vapor, and evaporation, are two different things.
Q. Commencing to give off vapor means that vapor will be explosive?
A. Yes, sir.
Q. But whether the gasoline will entirely evaporate because it is of higher specific gravity is not necessarily the law?
A. Not at all; it may be the other way.
Q. You say the same thing is true of blended gasolines, that a 70 degree test of blended gasoline will begin to give off an explosive vapor before a 60 degree test blended gasoline would do so? 171
A. If they are blended in the same way. You can get all kinds of blended gasolines.
Q. I am not talking about exceptional cases, or cases that would be so peculiar as to be interesting to scientific men; I mean in general run.
A. I mean in general run of commercial goods.
Q. When did the Van Tilburg Oil Co. begin handling any of these blended gasolines to any extent in Minnesota?
A. Approximately four years ago.
Q. Do they buy it ready blended, or do they blend it themselves?
A. Most of it we buy already blended.
Q. You don't know, then, just what qualities were put into the tank to make the blend?
A. I don't know from knowing how it was mixed; I

172 know from the tests.

Q. All you know is the tests you made.

A. Yes, sir, I might also say, frequently we buy blended where it is specified what grade of lower gravity shall be used.

Q. Is the blended gasoline cheaper than the straight-run gasoline of the same specific gravity?

A. It generally costs a little less.

Q. That is, it is sold at a little less wholesale?

A. It costs a little less from the refinery.

Q. It is sold at the same price at retail?

A. Some we sell the same; some we sell higher, for specific purposes.

Q. You don't sell it as blended gasoline?

A. No, we sell it for a special purpose.

Q. What do you mean by that?

173 A. We put it out, for instance, for lamp gasoline.

Q. For lighting plants?

A. For gasoline lamps.

Q. That is a neglible quantity as compared with the amount you sell of the other gasoline?

A. It would only be a small proportion.

RE-DIRECT EXAMINATION.

By Mr. Chase:

Q. Referring to your statement there that you were able to ascertain the exact proportions of the various grades of the petroleum products contained in this gasoline you purchased from the refineries as blended gasoline, would you be able to do that solely by the use of the Baume gravity test?

A. We couldn't at all.

174 Q. By what test do you determine that fact?

A. The best test, the only accurate test, is the distillation test.

Q. Are you able to state, covering the last four years, the degrees of specific gravity at which what has been known commercially as gasoline has been sold and determined in this state, that is, just exactly what degrees of specific gravity in this petroleum product have been sold commercially in this state as gasoline, the outside maximum and minimum degree?

A. The bulk of it has ranged between 58 and 70.

Q. Is the commercial term applied to gasoline below 58?

A. Below 58 is generally called naptha, or benzine.

Q. And that runs down to what specific gravity?

A. About 50.

Q. I refer now to the terms as they are used according to your experience that have been used three or four years, that is, commercially, by the oil companies. Then what would kerosene run? 175

A. Would range all the way from 40 to 50.

Q. Assuming that a package or receptacle containing gasoline such as has been sold and used commercially here in the state for the last three or four years, one receptacle contained gasoline marked, say, 58 specific gravity; another receptacle contained gasoline of the same character and marked 68 or 70 specific gravity, would that, in your opinion, indicate to the general public or would that in your opinion be any true indication that one was any more hazardous as a matter of common use by the public than the other?

Objected to as not proper re-direct.

The Court: I think you better exhaust these witnesses as they are on the stand. I am in doubt whether that is a proper subject of expert testimony; he may answer subject to the objection. 176

A. It would not be any dependable or reliable indication.

Mr. Stevenson: Do you mean to you or to the public?

Witness: It would not to me; it would be less so to the public.

JOHN HANCOCK,

sworn on behalf of defendant, testified:

By Mr. Chase:

Q. You reside in the city of Minneapolis?

A. Yes, sir.

Q. Your age is what?

A. 44. 177

Q. You have been connected with the defendant company for how many years?

A. Actively eight years.

Q. What is your present position? Are you an officer of the company?

A. Yes, sir.

Q. What office do you hold?

A. Vice-president of the company in charge of operation.

Q. How long have you been holding that office and been in charge of operation?

A. Five years; in charge of operation for the whole eight years.

Q. During the period covered by this suit, that is, from February 1st, 1913, to April 25th, 1915, what was the general character of your duties, in a general way?

178 A. Charge of the building and construction, operating, of the business in general.

Q. Were you during the period in controversy around the plant most of the time?

A. I was.

Q. State how much of the plant, so to speak, of this defendant is on leased property of the railroad company?

A. The warehouses, office buildings and storage tanks.

Q. Does the defendant lease from the railroad company any of the land on which any of the trackage is that is used in connection with this oil and gas business?

A. They do not.

Q. As I understand it your plant proper, that is to say, composed of your office and your rooms in which you keep your receptacles you fill with the oil that goes out to the consumer, the plant proper outside of the storage tanks, is
179 situated south of this trackage?

A. South of the trackage, and is all fenced in.

Q. The oil tanks and storage tanks are located north of this trackage?

A. Across the street.

Q. The plant is located east of the tracks?

A. Yes.

Q. Towards St. Paul?

A. Yes, sir.

Q. The storage tanks are located south of the trackage?

A. They are located south of the trackage.

Q. And are separated from the trackage by a street?

A. Yes, sir.

Q. And separated from the pumping tank by a street?

180 A. There is a street between both the buildings and storage tanks.

Q. The trackage, so far as your product is concerned, of this Chicago Great Western, is to the west of the pumping station?

A. Yes, it is west of the pumping station.

Q. What does that trackage consist of, in a general way, that is used by the railroad company in handling and switching these tank cars of gasoline and kerosene?

A. The trackage outside of the leased property belongs to the Great Western Ry. Co. It represents approximately six tracks in number, of which four are used for switching purposes, storage of cars, and the other two are used most of the time for unloading cars of gasoline and kerosene that come to the Pure Oil Company.

Q. How many tracks are used for these unloading purposes?

A. Two.

Q. You say besides these two unloading tracks there 181
are three or four other tracks designated as switching tracks?

A. Yes, sir, four others.

Q. As I understand it, at the end of these unloading tracks nearest the pumping station you have certain stationary pipes in the ground for the purpose of facilitating the unloading, conveying the oil from the tank car through the pumping station, is that right?

A. That is correct.

Q. How many of those pipes are there?

A. There are four in number.

Q. Are those used indiscriminately for gasoline and kerosene?

A. Three designated for gasoline and one for kerosene.

Q. How many tank cars of gasoline can you unload at 182
the same time?

A. Only one.

Q. How many tank cars of kerosene can you unload at the same time?

A. Only one.

Q. Will you state just exactly the history of the course or movement that obtained during this period covered by this suit, of tank cars of gasoline or kerosene oil coming into the yards consigned to your company. When were you first notified and by whom were you notified of the arrival of the car?

A. The cars are usually delivered on the sidetracks by the Great Western switch engine daily.

Q. By sidetrack you mean a track other than those unloading tracks? 183

A. By sidetracks we term the tracks used by the railroad company as sidetracks, more specifically speaking, the four outside of the unloading tracks, although the unloading track is sometimes used, the Great Western switch engine comes over daily with the string of cars. These cars are placed on these sidetracks. Among these cars are cars belonging to the Pure Oil Co. containing gasoline and kerosene almost generally, consigned to the Pure Oil Co. As soon as the switch engine places those cars in its sidetracks or comes into this particular yard we speak of, our unloading foreman goes out and takes the numbers of the cars.

Q. Who has been that unloading foreman during all this time?

A. Mr. Carl Danielson is our unloading foreman. He takes the numbers of the cars, and those are my instructions to him what to do. He then goes to the office to as-

184 certain from the records in the office the contents of these cars as to what they may contain, or supposed to contain.

Q. You mean whether gasoline or kerosene?

A. I do. After he gets this information and finds any of the cars contain gasoline or kerosene and asks Mr. Kelly, our receiving clerk, as to what cars of gasoline and kerosene are in, and Mr. Kelly notifies the deputy inspector by telephone. Mr. Danielson then goes to the yard and takes samples from those cars, bringing them in and testing them. If there is any question as to the gravity or to the quality of the goods the matter is gone over with himself and myself.

Q. Confining your answer now in all these questions to the period involved in this suit, that is, from February 1st, 1913, down to April 25th, 1915, when were the samples that Mr. Danielson took from the tank cars taken, with re-

185 spect to the location of the car?

A. Where was the car?

Q. Where were the cars at the time these samples were taken?

A. On the sidetracks of the Great Western Ry. Co.

Q. Not on the unloading tracks?

A. No.

Q. Was Mr. Danielson at that time supposed to also take the measurement of the quantity in the car to ascertain whether or not you were getting the full amount of the invoice called for, or less?

A. Yes, not only take the samples, but also the measurement as to what the car contained.

Q. You may go ahead. You say he notifies another of your employes to telephone for the inspector; then

186 what?

A. He goes immediately and takes the samples of the cars and makes the test.

Q. What test does he take?

A. Takes a test of the gravity of the goods.

Q. In both cases, gasoline and kerosene?

A. Yes, sir.

Q. Then next what is done?

A. If the gravity is correct and the proper goods in the car as noted on the invoice purchased, a switch list is made out and prepared for the switch foreman, so that when he gets ready to make the switch, which possibly is three or four hours later, the cars are switched as we may want them.

Q. Who makes out the switching slip?

A. Mr. Danielson.

Q. That, I understand, is delivered by him to the rail-

road yardmaster?

A. Yes, sir, he can't set the cars until he gets our switch 187
list.

Q. Then what is done?

A. When the switch foreman gets around to it he places the cars as designated by our switch list.

Q. Have you one particular track of those two unloading tracks on which your cars with kerosene are switched?

A. Yes, we switch the kerosene cars on one certain track and to one certain place.

Q. Could you unload that kerosene car into your usual kerosene storage tanks if it was switched on the other tracks?

A. No, we couldn't without considerable trouble.

Q. Were you around the yards where the cars came in, the railroad yards of the company adjacent to your plant a great portion of the time during the period covered by 188
this suit?

A. I was.

Q. And was acquainted personally, had personal knowledge of what was going on?

A. Yes, sir, had personal knowledge of the operating end of the work, especially along this line.

Q. You may state, if you know, what the average length of time was from the time that the car or any tank car containing gasoline or oil consigned to your company was delivered or switched in by the railroad company on to these switching tracks up to the time that it was finally unloaded and the contents pumped out into your storage tank, what would be the average period that would elapse?

A. The average period for unloading cars, unless in exceptional cases, would be approximately two days.

Q. I call your attention to the compilation here which 189
is attached to the complaint in this action marked Exhibits 1 to 24, and ask you if you have gone over this compilation and checked it over with a view to determining the time elapsing on practically all the shipments involved in this suit between the arrival of the car on the switching track in the yards of the railroad company, and the time it was unloaded, the contents were unloaded and pumped into your storage tanks?

A. Yes, I have gone over part of that list.

Q. Have you gone over any of the records of your company for the purpose of determining that fact?

A. Yes, sir.

Q. And your statement you have made is based upon your examination?

A. Yes, sir.

190 Mr. Stevenson: I move that the answer be stricken out as not the best evidence. We asked permission to examine the records and they wouldn't let us.

Motion granted.

Q. Taking your own personal recollection from your experience, observation and general familiarity with the movement of those cars during the period covered by this suit, what would be your statement as to the average time elapsing between the time of the arrival of those cars on these so-called switching tracks and the time at which the contents were pumped out into your storage tanks?

Mr. Stevenson: That is, if you know irrespective of anything you know from consulting the records.

A. I can state irrespective of the records the cars would average two days.

Q. You are acquainted personally with the deputy in-
191 spector who visited your plant, the deputy oil inspector, during that period?

A. I am.

Q. Was it the same deputy oil inspector that visited the plant all along during the period covered by this suit?

A. It was, except on one or two occasions.

Q. How extensive were those two occasions?

A. Just a short period of a week.

Q. And then some other inspector would be there?

A. His son.

Q. Who was that inspector?

A. Mr. Nillson.

Q. Mr. Nillson was the deputy oil inspector who visited your plant during the period covered by this suit, with the exception of possibly a week?

192 A. A week generally.

Q. Did you have occasion to observe him when he was there and know when he visited the plant?

A. I saw him almost daily when he came.

Q. I will ask you whether during the period covered by this suit Mr. Nillson ever took a sample of any oil or gasoline consigned to this defendant and covered by this action from the tank car?

A. I never saw Mr. Nillson take a sample from any of the cars during the period of his inspection.

Q. I will ask you whether or not during that period covered by this suit you ever saw Mr. Nillson take any sample of any of the oils or gasoline covered by this suit away from your plant?

A. I have seen him take some samples that Mr. Danielson had in bottles at the plant.

Q. How many times or how extensive was that, or how

many times would that be during the period covered by this suit? 193

A. I don't think I saw him take over a dozen samples.

Q. Would that be of gasoline, or kerosene, or both?

A. Of kerosene.

Q. I will ask you whether or not during the time covered by this action you ever saw Mr. Nillson, the deputy oil inspector, or any deputy oil inspector, make any tests, gravity or otherwise, of any of the products covered by this action during the period from February, 1913, down to the 25th of April, 1915?

A. I can't say that I ever saw Mr. Nillson make any tests, either gravity or otherwise at our plant.

Q. Are you aware of any time at which Mr. Nillson took away from your plant any sample of gasoline during this period in question?

A. I have no knowledge of Mr. Nillson taking any sam- 194 ples of gasoline away from the plant.

Q. Would you have known it during this period had he taken away such samples? I mean generally speaking. I don't mean every specific day for the two years and a few months involved in this suit, but generally speaking were your duties such and were you around there sufficiently at the time Nillson was there to have known had he taken any away?

A. I would have known had he taken samples from the plant regularly.

Q. During this period from February 1st, 1913, down to April 25th, 1915, in a general way what would be the average number of cars, or would those cars arrive daily?

A. Every working day?

Q. You would get cars in? 195

A. Some cars—you refer entirely in my remarks regarding gasoline and kerosene?

Q. Yes.

A. No.

Q. There would be some days you didn't get any cars?

A. Yes, sir.

Q. Then the next day you would get three or four cars?

A. Yes, or more.

Q. The next day possibly one car?

A. Yes, sir.

Q. And the next day three or four cars?

A. Yes, or none.

Q. Are you able to state from your own personal knowledge, and having regard to this period involved in this action, at what time, with reference to the arrival of these

196 various cars of oil and gasoline, a deputy inspector appeared on the premises? I mean of your own knowledge from your own observation.

A. Mr. Nillson would come down anywhere from noon until two o'clock in the afternoon on the day, or afternoon, or possibly the day later.

Q. I will ask you whether or not the deputy oil inspector arrived on the premises, as a general rule, on the same day that the cars were first switched by the railroad company onto these switching tracks? I am not referring to the unloading tracks.

A. Yes.

Q. I will ask you whether or not the deputy oil inspector during that period to your own knowledge ever requested that he be permitted to take samples from the various cars?

197 A. No.

Q. I will ask you whether or not during that period the deputy inspector asked that he be permitted to make his own tests on the premises, of these various products?

A. No.

Q. Will you state generally what the method was in connection with drawing off the oil from the storage tanks into either the tank wagons or into the receptacles into which they were to be ultimately sold to the trade. As I understand it, during the period covered from February, 1913, down to April 25th, 1915, during the earlier part of that period you were selling more oil in barrels than you did during the latter part of that period; the tank wagon business has been increasing right along?

A. Yes, sir.

198 Q. You are selling a larger portion from the tank wagon and will on your own trade than you are in barrels?

A. Proportionately so, yes, sir.

Q. You make your own receptacles, or do you buy them, your barrels and quarter-barrels?

A. We buy them.

Q. Do you paint them there at the shop?

A. Yes, all barrels are repainted unless they are new.

Q. When you drew the oil from the storage tanks for the purpose of filling up so many barrels of oil for the trade do your pipes down there in the plant that you pump the oil from into these receptacles show the particular storage tank they are attached to, and indicate what your specific gravity of oil in that tank is?

A. Each storage tank has a separate line direct from the tank to the warehouse, and each line has a barrel filler

which we fill from designating the different grades of oil.

199 Q. I understand each gasoline storage tank contains gasoline of a certain specific gravity?

A. It does.

Q. When you fill a barrel of gasoline for sale to the trade from this faucet at the end of your pipe that comes down into your warehouse from the storage tank, who puts the brand on to your receptacle that gasoline goes into during this period?

A. Mr. Carl Danielson had charge of that; he had one assistant who assisted in doing this work.

Q. Who furnished the stencils from which those brands were made? At that time?

A. I think the state oil inspector furnished them.

Q. How long did you continue to use these particular stencils?

200 A. So long as they were furnished. During the entire period of this suit.

Q. How did you arrive at the gravity that you marked on the gasoline brands when you were branding the gasoline barrels?

A. By our own test of the gasoline.

Q. Was that true as to the kerosene?

A. It was.

Q. What has been the minimum and maximum specific gravity of gasoline, as that term has been used in the oil trade in this state generally during the period covered by this suit?

A. The minimum gravity of gasoline used in the state during the period of this action has been from 60 gravity to 87.

201 Q. What came below 60 gravity, what was the next line of demarcation and what was it known as in the trade generally?

A. Naptha, or benzine.

Q. And that would run from what?

A. 56 to 57; that would be liable to run on up to 58.

Q. What would you term the product that run below 56 or 57 in the specific gravity during this period covered by this action?

A. The next gravity would be 49½, which would be kerosene.

Q. Was any inspection by any employe or officer of the oil inspection department of this state ever made of this gasoline or kerosene at the time or after it was drawn from the storage tank for the purpose of being put into the tank wagon or into the barrels for sale?

A. No.

202 Q. Basing your reply upon your actual knowledge from your being at the plant and on the premises during the time covered by this action, I will ask you whether or not it was possible, so far as the matter of time was concerned, for the deputy oil inspector in question to have taken a sample of the oil or gasoline, as the case might be, from the tank cars containing the product involved in this action and make the test required, before the unloading of the tank car?

A. Yes, there was ample time.

CROSS EXAMINATION.

By Mr. Stevenson:

Q. That is, if he hadn't anything else to do but stay around your plant all the time?

A. He had ample time because the cars laid there, as an average, two days.

203 Q. Do you pay demurrage on your cars?

A. We do.

Q. Regularly?

A. Every month.

Q. On every car?

A. We have an average agreement which permits us to keep a car on track seven days, and if we unload another one previous to the two days' time allowed after the first day, or three days' time, it is credited on that car.

Q. How much demurrage do you pay ordinarily on gasoline and kerosene?

A. We have paid as high as $90 a month.

Q. I mean the average.

A. Generally our demurrage would run, without referring to any records, it will average $20 a month.

204 Q. On gasoline and kerosene only?

A. Yes.

Q. You or your men open these tank cars as soon as they are put on the switching tracks?

A. Yes, sir.

Q. And from that time you designate where they are to be moved to, where they are to be spotted?

A. They remain on there until we make the test of the contents of the car.

Q. Does the switch engine have to make another trip down there to move the cars for you?

A. The switch engine is switching in that vicinity the majority of the day and gives us a switch when we are ready for it.

Q. Is there any extra charge for the switch?

A. There is no extra charge; that is part of the freight

rate.

205 Q. Are all of those tracks you have described at the Minneapolis plant spur tracks; that is, are they connected with the railroad line at one end only?

A. They are all spur tracks.

Q. How long is the railroad track or the head track from the point where it leaves the line of the railroad to your industry?

A. That extends, you might say, from the east yard, if you wish to call the main line—from the east yard, I imagine, two miles.

Q. Your industry is at the end of the spur tracks, isn't it?

A. At the end of four of them, yes.

Q. Are there any of the tracks that run through your premises to other industries?

A. No, there is not.

206 Q. So that all of the cars that come into your premises have to come from one direction?

A. Yes.

Q. Outside of your premises how many tracks are there?

A. You refer to the sidetracks where the Great Western places cars for us and other industries?

Q. Yes.

A. That may be a very wide scope because it is a great switching yard there.

Q. You are at one end of it?

A. We are at one side of it.

Q. All of those six tracks you mentioned as serving your industry unite in one track, do they not, just outside your premises?

207 A. Unite in two tracks that is eventually leading into one.

Q. Then you have possession of those cars of oil and gasoline when they are put on the switching tracks and when your man opens them?

A. No, we haven't possession of the cars.

Q. You open the cars and take out samples?

A. We do.

Q. Do you have an expense bill at that time, or the freight bill?

A. We do not.

Q. When do you get them?

A. That is a matter of record in the office, it is not handled by me.

Q. Your man goes right on and opens the cars as soon as they arrive on the sidetracks?

208 A. If we find they are consigned to us.
Q. Are there other cars on the switching track daily?
A. Yes, sir.
Q. Adjacent to your premises?
A. Yes, sir.
Q. That are not for you?
A. Yes, sir.
Q. Are they mixed in among your cars?
A. They are.
Q. How long does it take to pump out a car?
A. Not to exceed four hours.
Q. Do you pump nights?
A. We don't.
Q. You said your own man Mr. Danielson inspected the contents of those cars as soon as they arrived on the switching tracks and tested the contents?
209 A. Yes, sir.
Q. Did you mean to say he gauged the contents also, that is, measured the quantity?
A. We distinguish the quantity by the car being full to the dome; the dome is the top of the car coming up. If the car is not full up to the dome we class the car as short, with the exception of the temperature, which is added or subtracted as the case may be, to allow for inspection.
Q. Does your man test the contents in the car, or a sample?
A. He takes half a gallon sample out of the center of the car, as near as he can get it, and takes it to the warehouse where we have our instruments and the contents is tested before us.
Q. What does he test for?
210 A. For gravity.
Q. On both gasoline and kerosene?
A. Yes, sir.
Q. Does he make any other test of either at that time?
A. None whatever.
Q. Then his results are compared with your invoice from the refinery?
A. They are.
Q. Do you buy on gravity test?
A. We do.
Q. According to the gravity test the price is regulated to you?
Objected to as not proper cross examination. Sustained.
Q. You say that Nillson, the state inspector, visited the premises every day?
A. I didn't say every day.
Q. You said you saw him there almost daily?

A. That may be true.

Q. And did he always come at a certain time of the day? 211

A. When I saw him at the premises it would be during the hours stated before.

Q. Between 12 and 2?

A. Don't misunderstand me; it might be 11, it might be 4 if you need definite dating, I didn't look at my watch to see.

Q. Are you there on the premises during all the day?

A. Generally from 6:30 in the morning until 5:30 at night.

Q. Were you absent for lunch during the time covered by the action?

A. Yes, sir, I took half an hour for lunch.

Q. At what time do you go?

A. Any time between the hours of 12 and one. 212

Q. You said your own man did the branding of the receptacles you filled from those storage tanks and used the state stencils, that is true, is it?

A. It is.

Q. Do you know why that arrangement was made with the state?

A. I don't.

Q. Did you have anything to do with making it?

A. I didn't.

Q. Did you have Mr. Kelly working in that department at one time?

A. No, I didn't.

Q. Where was he working?

A. Receiving clerk.

Q. Did he do any of the branding when he was there? 213

A. Not during my period of time.

Q. You knew, during all this period involved in this suit, your man was doing the branding of the receptacles, did you?

A. Yes, sir.

Q. Did you make any objection to it to the state oil inspector?

Objected to as immaterial. Overruled. Exception.

A. I didn't.

Mr. Chase: I move to strike out the answer for the same reason.

Motion denied.

Q. On these stencils of the state, for kerosene, it provided in the stencil that the fire test was not less than 120, that was cut in the stencil, was it not?

A. Whatever you have on the stencil was put on the

214 barrel.

Question repeated.

Witness: It is.

Q. The stencil has a blank in it of what the gravity test of the kerosene is?

A. Yes, sir.

Q. Would your man also fill in the figures showing the gravity test of the kerosene upon which this stencil was put?

A. Yes, sir.

Q. What gravity test did he use, that is, did he use the gravity test specified in the state oil inspector's certificate of that kerosene?

A. He used the actual gravity test, what the goods were.

Q. That is, as the result of his own test?

215 A. Yes, sir.

Q. Do you know whether that differed from the test of the state oil inspector's certificate?

A. That I can't say.

Q. You don't refer to the state oil inspector's certificate?

A. I never received them.

Q. Do you know that your company received the certificates of this inspection of all of this commodity involved in this action? It is stipulated you did receive it.

A. During the whole period I don't know.

Q. In what way were those certificates delivered to your company?

A. I have learned since, through the mails.

Q. Were you not handling the mail at that time?

216 A. I was not.

Q. And you were making regular reports to the state oil inspector of your out-of-state shipments, were you not?

A. No, sir.

Q. Your company did?

A. That may be true.

Q. Don't you know anything about it?

A. I have charge of the operation of our business, and therefore that wouldn't come to my attention, the office part of the work.

Q. The stencil that was used on the gasoline was also a state stencil at that time?

A. I understand so.

Q. And the gravity test was left blank on that stencil, the same as on the kerosene stencil?

A. Yes, sir.

Q. And that gravity test was written in by your own

men?

A. Yes, sir. 217

Q. To correspond with the specific gravity of the gasoline?

A. Yes, sir.

Q. Where did you obtain that specific gravity that was stenciled in on the receptacle?

A. By the test of the contents of the goods sold.

Q. The test of your own men?

A. The test of our own goods.

Q. By your own man?

A. Yes, sir.

Q. Were you using this same stencil, or the substance of it, on your sales from your tank wagons or your filling stations?

A. We used the same thing, or what the law imposed upon or insisted upon on the delivery slips. 218

Q. So that all of the oil and gasoline you sold in Minnesota, which was received by you during the period involved in this suit, was sold as being state-inspected oil and gasoline of a certain standard?

Objected to as incompetent, irrelevant and immaterial and calling for the conclusion of the witness.

Objection overruled. Exception by defendant.

A. No.

Q. What were the exceptions, if any?

A. We sold the gasoline and kerosene and so branded it as tested by us.

Q. Didn't you put it out to the public as being state inspected by Hjalmer Nillson, deputy, Guy A. Eaton, inspector?

A. Yes. 219

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Exception by defendant.

Witness: I refer to the gravity as to your last words in that question you asked me.

Q. That is, you meant that the gravity specified in your certificate on your sales slip or on your receptacle was the result of your own testing?

A. Yes, sir.

Q. But that it was all put out to the public as being state-inspected?

A. It was all branded and printed on our tickets to comply with your law.

Q. You so advertised in the periodicals in the state that all your oils and gasoline were state-inspected?

A. Not to my knowledge.

Q. Did you ever make any objection to the state oil

220 inspector to the effect that Mr. Nillson was not inspecting the kerosene oil or gasoline you were putting out, during the period referred to?

Objected to as immaterial.

Objection overruled. Exception by defendant.

A. I didn't make any objection.

Q. Did you ever make any objection to Mr. Nillson himself that he was not doing his duty as to the inspection of your commodities?

Same objection. Same ruling.

A. I considered he knew his duties. I made none.

Q. You said that gasoline was known as being between 60 and 87 gravity?

A. Yes.

Q. Naptha between 56 and 57?

A. Yes, sir.

221 Q. What would 58 degree be?

A. Naptha.

Q. What would 59 be?

A. Naptha.

Q. Do you mean that you don't buy gasoline of a less test than 60, and buy and sell it as gasoline?

A. During the period of this suit we didn't.

Mr. Stevenson: Except as to the naptha your counsel has agreed you sold as gasoline.

Mr. Chase: We object; that is not the agreement. We agreed we mixed naptha with a higher grade.

Q. Didn't you frequently get in cars of 58 and 59 gasoline that was so inspected and so tested, and that you bought and sold as gasoline?

A. No, sir, we got them in at that, but we didn't sell

222 them as gasoline.

Q. You bought them as gasoline?

A. We didn't.

Q. They were invoiced to you as gasoline?

A. They were not to my knowledge.

Q. Is there any arbitrary line of distinction between naptha and gasoline in the trade?

A. The trade name in the oil business is that anything below 60 was naptha. We would buy this naptha—it would probably be bought at 55 to 57; it might run a point in gravity over that, or might go a point in gravity less; that would be immaterial; therefore the inspection of the contents might show that. It would be a matter known to us, unless it was too low.

Q. In getting the specific gravity they use what they call the Baume instrument or hydrometer?

A. Yes, sir.

Q. That gives temperature as well as specific gravity?
A. Yes, sir. 223
Q. And is the temperature taken into consideration in determining the specific gravity?
A. Always.
Q. By means of some equalizing chart?
A. No, by warming it up or cooling it down, as the case may be, always bring it to the normal temperature of 60 before taking the test.
Q. You can take the test when it is 50, or 30?
A. It can be done, but not accurately.
Q. And make the temperature allowance?
A. It can be done, but not accurately.
Recess until 2 p. m.

RE-DIRECT EXAMINATION.

By Mr. Chase:
224
Q. You were asked relative to the arrangement made between your company, or by your company on the one part, with either the deputy oil inspector or the oil inspector, on the other part, relative to who should do the branding during the period covered by this suit; do you know of any such arrangement having been made to your knowledge?
A. No arrangement was made to my knowledge.
Q. In answer to one of Mr. Stevenson's questions you stated that the railroad company gave you the switch when you were ready; just what did you mean by that?
A. After we inspected the cars of gasoline as to their quality and quantity we would then give the switching crew instructions to spot the cars on the unloading track so we could unload them.
Q. In position to be unloaded? 225
A. Yes.
Q. What was the practice where the inspection made by you as to the gravity and quantity of the car showed it to be other than that which you had ordered from the party who shipped it?
Objected to as irrelevant and immaterial.
Q. What was done in a case of that kind?
Same objection.
The Court: Is the purpose of this testimony to show that some of the goods charged for here were rejected and returned?
Mr. Chase: No, the purpose of this testimony is to show that where the result of their inspection and their examination as to the quantity of the car developed it was not what they contracted for, or a shortage, something of that

226 sort, it was not accepted and they notified the consignor while it was on the switch track.

The Court: That is simply a custom, not supposed to relate to any of the oil in controversy here. I think he may state what was done with the rejection of the cars. There is no controversy about quantity.

A. When a car, after our inspection, was not up to the specifications as contracted for we would refuse the car and the same would be taken away by the railroad company.

Q. Was that always the case that the car was shipped back to the refinery in that case?

A. Not to the refinery, but taken and delivered to someone else or sold to some other place.

Q. I will ask you some questions not re-direct, in regard to the St. Paul end on this examination. How many
227 cars, out of the quantity involved in this litigation would you say had been shipped direct to St. Paul from the refineries, rather than to Minneapolis?

A. How many cars?

Q. Yes, out of the number involved in this litigation during this period.

A. I should say during the period of this suit there was at least 100 cars, an average of possibly a car a week, that would be—how many weeks is that?

Q. About 120 weeks.

A. Yes, it would average a car a week, I should imagine.

Q. Was that mixed, cars of gasoline or kerosene, or which?

A. Exclusively gasoline.

228 Q. There was no kerosene oil during this period covered by this suit shipped direct from the refinery to St. Paul?

A. No, sir, we have no storage tanks here.

Q. Are you familiar with the movement of these cars as they came in here to St. Paul during that period, I mean relative to the switching in on the track, etc.?

A. I am familiar with it.

Q. What was the course pursued by those cars during that period?

A. When the cars came into St. Paul via the Great Western Railway Company, who are the local road with which we do most of our business, our St. Paul office was notified. They and our local representative here made the inspection and reported to our office that the car was in on the Great Western track, reported to our office in Minneapolis. We would possibly get that notification by tele-

phone, and the following day or the day after I would send a man over to unload it; the reason I sent a man over is 229
because we only have hand power at the St. Paul plant, and therefore it was necesary that a man pump it out by hand.

Q. How long does it take with the average tank car?

A. About a day for them to unload by hand.

Q. On what spur track or trackage are the St. Paul storage tanks located, what road?

A. On the Great Western railroad tracks.

Q. Do you own or lease the land on which the tracks are located on which the cars come in and are placed for unloading?

A. We do not.

Q. How many storage tanks have you in St. Paul?

A. During the period of this suit we only had two.

Q. Has this defendant company a branch place of busi- 230
ness in other states other than Minnesota?

A. Yes, we have 24 branches.

Q. In what states?

A. In the states of Montana, Minnesota, Washington, North Dakota—I forget where they are.

Q. Some in Canada?

A. Yes, in Canada; in Idaho also.

The Court: Where is the main place of business?

Witness: Minneapolis is the main place of business. It is stipulated that it is a South Dakota corporation.

RE-CROSS EXAMINATION.

By Mr. Stevenson:

Q. Do you have any place of business in South Dakota?

A. You refer to a warehouse? 231

Q. Do you sell gasoline, or oil, or any other commodity in South Dakota?

A. Lots of it, yes.

Q. And fill them from your Minnesota places of business?

A. The majority is shipped from Minneapolis.

Q. Your principal Minnesota office is in Minneapolis?

A. Yes, sir.

Q. That is where all the officers reside?

A. No.

Q. What exceptions?

A. Three of the officers reside in South Dakota; one in St. Paul, three or four in Minneapolis and one in Kansas City.

Q. You say your St. Paul storage tanks are not equip-

232 ped for handling kerosene at all?

A. No.

Q. When you order shipments of gasoline to be made to St. Paul you send those orders to the refineries from Minneapolis?

A. That is a matter I don't handle; I am not familiar with ordering the goods.

Q. You have charge of the selling end?

A. I have not.

Q. Neither the buying nor the selling nor the office?

A. No, sir.

CARL V. DANIELSON,

re-called on behalf of defendant, testified:

By Mr. Chase:

Q. You are in the employ of the Pure Oil Co., the de-
233 fendant in this case?

A. Yes, sir.

Q. And have been in their employ for how many years?

A. Eight years?

Q. How old are you?

A. 36.

Q. Are your duties practically the same now they were during the period covered by this suit?

A. Yes, sir.

Q. You know this suit involves a period running from February, 1913, down to the last of April, 1915?

A. Yes, sir.

Q. What were your duties during the time covered by this suit, in a general way?

A. I have charge of all the gasoline and kerosene; I
234 received all the cars that was brought in there, and a part of all the filling of the barrels, tank wagons, etc.

Q. Will you describe the location of those tracks of the Chicago Great Western on which those cars came in.

A. Yes, they are right outside of the Pure Oil Company plant.

Q. How near the plant?

A. Just outside of the fence.

Q. Are they what would be across the street if 13th Ave. So. was continued down to the river?

A. No, they are not out by the river.

Q. If 13th Ave. So. went through down to the river the trackage would be across 13th Ave. So. from the plant itself?

A. Yes.

Q. Do you have charge of looking after those cars when they come in, or did you during this period, watch to see

when the cars come in?

A. Yes, sir. 235

Q. Where would those cars containing this gasoline and kerosene come into the yards of the railroad company, at what point first?

A. They first come in on the main road then they were switched in on the sidetracks.

Q. You know that there are two tracks there in the yard on which the cars are switched in when you are ready to unload them?

A. Yes, sir.

Q. Do you include those two in the sidetracks?

A. No, sir.

Q. You mean by sidetracks, other tracks?

A. Yes, sir.

Q. Will you state to the court what you did as these cars came in during the period covered by this action— 236
in the first place how did you know when these cars came in?

A. I was watching for the switch.

Q. Did you go out every morning and look over the switching yards, switch tracks?

A. Yes, sir.

Q. Then what?

A. Then I took the initial and number of the cars, and then I bring the same, a slip, up to the office.

Q. When you took the initial and number of the cars at that time where were the cars, on the unloading tracks or switch tracks?

A. No, they were on the sidetracks.

Q. Switch tracks, we will call them.

A. Yes, sir.

Q. You took the initial and number of the car; did you 237
put it down on a piece of paper?

A. Yes, sir; then I brought it up to the office, and the man that buys all the stock he puts down on the same piece of paper on which the numbers and the initials are what each car contains.

Q. You mean whether it was kerosene or gasoline?

A. Yes, sir.

Q. Then what did you do?

A. Then told Mr. Kelly to report to the oil inspector how many cars were in.

Q. Then what did you do?

A. Then I went and took a sample and tested it.

Q. Where did you get the sample from?

A. From the tank cars.

Q. Where was the tank car at that time that you took

238 the sample from?

A. On the same tracks.

Q. That is, on the switch tracks?

A. Yes, sir.

Q. Then what did you do?

A. Then I made out the report what each car contained, and what the oil and gasoline tested.

Q. Did you take the test?

A. Yes, sir.

Q. From this sample?

A. Yes, sir.

Q. What test did you take as to the gasoline?

A. Gravity test.

Q. How soon after you obtained the samples from those cars would you take the test?

A. I took it as soon as I got the sample.

239 Q. What test did you make as to the kerosene?

A. Gravity test.

Q. At what temperature did you take this test?

A. At 60.

Q. Did you take the gravity test with the Baume hydrometer?

A. Yes, I had a hydrometer.

Q. What did you do after you got the gravity test; did you make a record of that gravity test, did you put the gravity test down on any slip of paper?

A. Yes, sir; I made out the report for each tank car, what it contained, gasoline or kerosene.

Q. Did you put down on that same slip the gravity of that particular car?

A. Yes, sir.

240 Q. Which slip showed the correct car number, the car initials, what it contained and the gravity according to your test?

A. Yes, sir.

Q. Did you attend to those matters you have testified to continuously during this period from February, 1913, down to the latter part of April, 1915, you were doing that all that time?

A. Yes, sir.

Q. Were you there practically every day during that period? I mean working days.

A. Yes, sir.

Q. What were your hours at the plant; what time did you get there in the morning?

A. Seven o'clock.

Q. What time did you leave in the evening?

A. Half-past five.

Q. What time would you go to lunch?

A. I ate my lunch right there. 241

Q. As a general rule how long a period would it be from the time they were switched on to this switching track by the railroad company up to the time they were placed on the unloading tracks and unloaded into the storage tanks, as a general average how long a period from the time the switch engine left them on the switch tracks up to the time you would unload them into the storage tanks?

A. About a day.

Q. It would run sometimes longer than a day?

A. Sometimes, yes.

Q. How long did it take you to unload a tank car?

A. Between three and four hours.

Q. You could only unload one gasoline tank car at one time, is that right?

A. Yes, sir. 242

Q. Or one kerosene tank car at one time?

A. Yes, sir.

Q. How did the railroad company know, or what information, if any, did you give them, or instructions, as to when to switch the car from the switch track on to the unloading track and place it in readiness to be unloaded; how did they know when to do that?

A. I made out the switch list.

Q. What did the switch list contain?

A. It says on the switch list where to spot that car to that pipe and another car to that pipe, etc.

Q. Did you make out and give this switch list to a man in charge of the railroad yards before you made your tests, or after?

A. I made it out after I made my tests of the contents. 243

Q. Did you see the deputy inspector whenever he came down there during this period?

A. Yes, sir.

Q. Did he come down to where you were working?

A. Yes, sir.

Q. During this period from February 1st, 1913, down to April 25th, 1915, did the deputy inspector who came down there, or any other inspector that you know of, of the oil inspection department, himself take any samples from the tank cars at any time?

A. No.

Q. I will ask you whether the same inspector was there all the time during this period from February 1st, 1913, until April, 1915?

A. Yes, sir.

Q. Was it Mr. Nillson?

244 A. Yes, sir.

Q. Did Mr. Nillson during that period ever himself make a gravity test on the premises, down there, of either gasoline or kerosene?

A. No, he didn't.

Q. Did Mr. Nillson during that period ever take away with him from the premises any samples of gasoline?

A. No, not of gasoline.

Mr. Stevenson: Objected to as irrelevant and immaterial for this reason: This is, as I have followed it, the first direct testimony attempting to show that the state did not make any actual inspection of the gasoline. Mr. Hancock's testimony was of a negative character. He said he didn't see him do anything of the kind, and this is the first testimony of the character that would indicate that an inspection had not been made, and this testimony is
245 objected to for the reason that the admissions made by the defendant in this action preclude it from denying that any real inspection was made. They have admitted they received the certificates of inspection, which prima facie purport complete inspection, and that they have used these certificates as indicating the branding of the commodity which they have sold to the public and they have held out their commodity as having been state-inspected, and they cannot be heard to say that the commodity was not inspected where they have taken advantage of all the benefits of the state inspection. If it was not inspected they knew they were selling a commodity not inspected and they were liable for every sale they made; that being so can they now take advantage of their own wrong if it was not inspected?

246 The Court: I have very serious doubts on the question as to whether or not the defendant can take advantage of it, but I think it is not wise to try this case so it may possibly turn on the question of admission or rejection of testimony, and I think the testimony will be received subject to the State's objection at this time.

Q. During that same period I am referring to, from February 1st, 1913, down to the 25th of April, 1915, did Mr. Nillson take away any samples of kerosene?

A. Yes, he took some.

Q. According to your best recollection how many samples did he take away during that period, of kerosene?

Mr. Stevenson: May it be understood this whole line of inquiry is subject to the same objection and the same ruling?

The Court: It may be so understood.

A. From 12 to 15 samples.

Q. During the period I have mentioned from February, 1913, to April, 1915? 247

A. Yes, sir.

Q. I think you testified that he made no gravity tests either of kerosene or gasoline there on the premises?

A. No.

Q. Did he make any fire tests of the kerosene on the premises?

A. Not that I know of.

Q. Weren't you generally around where he was when he was there on the premises?

A. Yes, he didn't make any fire tests there in the warehouse; I know that.

Q. Of this kerosene that came in, to your knowledge did he have any of it except these 12 or 15 samples that he took with him?

A. No. 248

Q. These various cars you have testified to came in and were put on the switch tracks, as a general proposition, how long before the deputy inspector arrived there?

A. Generally he was there between 10 and 11 the same day or some time in the afternoon about two o'clock of the same day, or the next day.

Q. What was generally the case, that he was there the same day, or the next day?

A. I can't exactly remember, but on the average he was there the same day or the next day.

Q. You were having cars coming in at that time more or less all the time?

A. Yes, sir.

Q. I will ask you whether or not when the inspector arrived down there during that period he asked you for 249 the gravity tests of those various cars?

A. Of the gasoline?

Q. Yes.

A. Yes, he asked me what it tested, every time, pretty near.

Q. Did he have a record of the car initials and car numbers?

A. Yes, he would get them from my slip.

Q. Got the record of the initials and car number?

A. Yes, sir.

Q. Did he go out in the yard at all to look at those cars during that period?

A. No, sir.

Q. He got the record of the car number and car initials from your slip?

A. Yes, sir.

250 Q. Do I understand you to testify he would ask you for the gravity test?

A. Yes, sir.

Q. Do you know whether he put that down or not?

A. Yes, he puts it in his little book.

Q. You didn't take the fire test of the kerosene?

A. No, sir.

Q. Nothing but the gravity test?

A. Nothing but the gravity.

Q. Leaving aside what he might have done with the dozen to 15 samples of kerosene that he took away with him during that period, do you know of the deputy inspector ever having taken any fire test of any of the kerosene received during that period?

A. I couldn't tell you; sometimes he used to tell me about the fire test.

251 Q. I am not considering the samples he took away, I mean except when he took away samples, do you know of his ever making any fire tests of the kerosene oil except what he could have made from the samples?

A. No, he couldn't make the fire tests if he didn't have the samples.

Q. Did he have samples of any of the kerosene oil except those that he took that you have testified to?

A. No.

Q. Were you in position when he was there to have known if he had made any tests himself?

A. Yes, sir.

Q. You would have seen him?

A. Yes, sir.

Q. But you say he didn't make them?

252 A. No, he didn't.

Q. I will ask you whether or not this deputy oil inspector, or any other deputy inspector during this period ever asked you to be permitted to take samples from the tank cars, whether he ever asked you if he could go out and take samples from the tank cars?

A. No.

Q. I will ask you whether or not he ever asked permission to make his own tests down there on your premises?

A. No.

Q. Coming down to this other proposition, it has been testified to here that you had charge of the branding of the various receptacles into which this gasoline and kerosene were drawn from the storage tanks; is that true, did you have charge of the branding?

A. Yes, sir.

Q. When you drew it out of your storage tanks into

your barrels and casks?

A. Yes, sir. 253

Q. Did you have charge of the branding during the period covered by this action?

A. Yes, sir.

Q. Who did the actual branding?

A. I did the most.

Q. Who else?

A. My assistant.

Q. Who is that?

A. Mr. Larson.

Q. Did he do that under your direction?

A. Yes, sir.

Q. Was there ever any branding during that period done by the inspector, or deputy inspector?

A. No.

Q. Was there ever any inspection to ascertain the gravity either of the gasoline or the kerosene as it was drawn out from the storage tanks and placed in the tank cars or receptacles in which it was to be sold? Did you ever test the gravity when you were loading from the storage tanks, drawing it into these barrels and cans? 254

A. Yes, I did sometimes.

Q. You understand what I mean?

A. Yes, sir.

Q. As you draw it off to fill up barrels to send to the customers you sometimes take another gravity test?

A. Yes, sir.

Q. In branding these various barrels and receptacles in which you drew this gasoline off from the storage tanks, what gravity did you give it on the brand?

A. I put on the same as the storage tank contained. 255

Q. How did you determine what that was?

A. Because each tank had a separate pipe, a separate and distinct gravity in each tank, and a faucet attached to each pipe, and I knew what each tank contained.

Q. Were you the man who operated the pump?

A. Yes, sir.

Q. That pumped the gasoline from the tank cars into the storage tanks?

A. Yes, sir.

Q. I will ask you whether or not it was the custom to keep separate in each tank gasoline of the same relative gravity?

A. Yes, sir.

Q. Did you ever see any of these at the time you were branding these barrels and various other receptacles that contained oil taken out of the storage tanks—did you have

256 at that time these inspection slips that have been referred to here as coming from the inspection department?

A. No, I never saw them before now.

Q. You never saw them before this trial?

A. No, sir.

Q. I will ask you whether or not since some time during the latter part of October, or the first of November, 1915, last fall, you have had the same deputy oil inspector you had before that?

A. Yes, sir.

Q. He has continued right straight along up to the present time?

A. Yes, sir.

Q. And has he since last October or the first of last November been making gravity tests there at the plant?

A. Yes.

257 Q. I will ask you at what time he has been arriving there with reference to the time your cars came in on the switching track during that period?

A. You are talking about some period since?

Q. Yes, I am talking about the period from last October, 1915, or the first of November, up to the present time.

Objected to as irrelevant and immaterial.

Mr. Chase: I want to show by this witness that since last October or November, without going into the reason why, the inspector has been coming down there, making his tests, and arriving there at all times, either on the same day, or on the morning of the next day after the arrival of the car and the notification of said arrival has been given. The statute provides inspection shall be made before unloading, providing it can be done within 24 hours after
258 the arrival of the car and notice thereof has been given the deputy inspector.

The Court: I don't think that is material in this case. The objection is sustained. Exception by defendant.

Mr. Chase: We offer to show by this witness that from a date at or about the latter part of October, or the first of November, 1915, up to the date of the trial in this case, the same deputy oil inspector that has heretofore been coming down to the plant, has been making gravity tests of the gasoline and kerosene received at this plant, and has been in the habit of arriving there at the plant, as a general proposition, on the same day that he received notification of the arrival of the cars in question.

Same objection.

The Court: Objection sustained. This relates to a period long subsequent to any time involved in this case.

CROSS EXAMINATION.

By Mr. Stevenson: 259

Q. You have talked this matter over you testified about with Mr. Chase before this trial—have you talked with Mr. Chase, the attorney, about what you were going to testify to?

A. He asked me some questions, yes.

Q. Did he ask you all the different typewritten questions he has been giving to you since you have been on the stand; did he have the questions in typewriting that he asked you ?

A. I don't know anything about that.

Q. Did he tell you the different questions he was going to ask you when you got on the stand

A. No, he didn't.

Q. You said you had charge of the pumping of the oil and gasoline out of the tank cars into the storage tanks? 260

A. Yes, sir.

Q. And the opening of the tank cars when they were on the switching tracks, and getting samples and testing of the samples, and checking up of the records in the office, the ordering of the cars moved and spotted where they were to be unloaded, and then you had charge of the filling of packages, barrels and cans?

A. Yes, sir.

Q. And tank wagons?

A. Yes, sir.

Q. How many tank wagons were being filled there at that place?

A. We have three or four.

Q. How many tankfuls do you draw out in a day into the wagon? How many tank wagons do you fill in a day? 261

A. We fill from 15 to 20.

Q. You are kept pretty busy around there all day?

A. You bet.

Q. When you are inside of the warehouse filling these receptacles you can see the switch tracks?

A. Yes, sir.

Q. When you are in the pump house can you see the switch tracks?

A. Yes, sir.

Q. Can you see the unloading tracks when you are in the pump house?

A. No, I can't.

Q. Can you see the unloading tracks when you are in the warehouse?

A. Yes, sir.

Q. That is, if you go to a window and look out?

262 A. I can go to the door; it is wide open all the time.

Q. You don't mean to say that Mr. Nillson couldn't possibly have gotten samples from those tank cars without your knowledge?

A. No, he couldn't.

Q. Why couldn't he?

A. Because it is very hard to climb up, and he is kind of a heavy man.

Q. You have to climb up, don't you?

A. Yes, sir.

Q. You have seen him climb up many a time, haven't you?

A. I saw him a couple of times lately.

Q. That is all?

A. Yes, sir.

Q. How do you open those tank cars?

263 A. Generally I have to have a bar or a piece of iron, or something, and put between the cover and screw the cover off.

Q. You unscrew the top at the dome?

A. Yes, sir.

Q. After you have opened the car and taken out the samples do you screw the top on?

A. I screw it down, but not tight.

Q. Not tight enough so you need a bar to open it again?

A. No, sir.

Q. You say the average time that the cars of oil and gasoline stand on the track after they arrive, before they are emptied is a day?

A. From one to two days.

Q. You said about one day; that means some of them

264 stay there longer than that?

A. Yes, sir.

Q. And some are emptied as soon as they arrive?

A. Some would be emptied that night.

Q. When the unloading track is empty when the switch crew brings up a car of gasoline or oil they run it on the unloading track, don't they?

A. No, sir.

Q. Don't they ever do that?

A. No, sir.

Q. Even though the track is empty?

A. They might set it outside, but we don't bring it up to the pipe; they might set in one or two cars and set it on the track if the yard is full.

Q. Then you would move those cars to their proper pipes yourselves?

A. No, sir.

Q. You would have the switch engine do that?
A. Yes, sir. 265
Q. Then the cars that came in there between 10 and 12 o'clock, as one witness has testified, might be emptied that same afternoon?
A. Some might be emptied that evening because the switch they always go to another transfer company and switch there, so they never hardly come into our plant until about two in the afternoon.
Q. You call it evening after two o'clock?
A. It takes four hours to pump a tank.
Q. You would start pumping out at two o'clock, or as soon as they got in?
A. Yes, if we needed the gasoline.
Q. In the summer time you quite often needed the gasoline, didn't you?
A. No, we had a pretty good supply. 266
Q. Even in 1913 and 1914?
A. Yes, sir.
Q. At any rate you unloaded them as soon as you got the tests made and as soon as the railroad company could put it in on the unloading track?
A. Some of them, yes.
Q. You would always unload as soon as you could get them in there and get a pipe for them?
A. Sometimes we were all stocked up and didn't have room and we had to hold them.
Q. The only delay in unloading a car was the delay in the railroad company getting it in to the unloading pipe, or, having the pipe you could unload it there?
A. Lots of cases where there was a shortage in the tanks we had to hold them for inspection. 267
Q. If you had a storage tank full you couldn't unload it until you got some out of the storage tank?
A. No, sir.
Q. You said you did the branding of those barrels and cans yourself?
A. Yes, sir, most of it.
Q. You are the one who actually used the State stencil, then?
A. Yes, sir.
Q. And John Hancock and L. R. Hancock knew you were doing that branding in that way, did they?
A. Yes, John Hancock knows it.
Q. He was around there more or less all the time?
A. Yes, sir.
Q. He knew that the state deputy oil inspector was not making any tests on the premises, did he?

268 A. Yes, he did know.

Q. And he knew what samples the inspector took away with him?

A. I guess he did.

Q. He had just as much opportunity for knowing as you did, didn't he?

A. Yes.

Q. You say that Mr. Nillson copied the car numbers and initials and the name of the contents of the car from your memoranda you made?

A. Yes, sir.

Q. Where did he get the gravity you had found the contents to be?

A. He used to ask me, does it test so and so, and I said yes.

Q. You hadn't marked the gravity on this same memo-
269 randum, had you?

A. Not exactly; all that was marked on the slip was marked in the office what that car contains; afterwards when I took the gravity test it might be a little different, higher or lower a little than I had that on the other report.

Q. Nillson didn't see the result of your own tests?

A. Not except when I happened to be testing some and he happened to come in there and saw it in the yard.

Q. When he would read the hydrometer himself?

A. Yes, sir.

Q. You use the same kind of hydrometer he did?

A. He had a smaller one.

Q. It was not the same kind, the same standard?

A. It reads the same; I don't know whether it would
270 test the same or not.

Q. Whenever he asked you what the result of one of your tests was you always told him the truth, did you?

A. Yes, sir.

Q. You never saw the certificates that he made as the result of his inspections?

A. No.

Q. You knew that he was sending in certificates to the office right along of his inspection, did you?

A. No, sir, I didn't know anything about it.

Q. You saw him down there nearly every day?

A. No, not exactly every day.

Q. Nearly every day?

A. Yes.

Q. How long did he stay, usually?

A. He stayed there until he got through, to get his

cars and numbers.

Q. Did he ever find you had unloaded a car that had come in since his last visit? 271

A. I can't remember.

Q. It is possible that he did, isn't it?

A. Yes, it may be that he did.

Q. Did Mr. Nillson ever mark down these car numbers on a card that he carried?

A. From the numbers I had?

Q. Yes.

A. Yes, sir.

Q. Did he go through the yard and get the car numbers also?

A. No.

Q. Are you sure of that?

A. Not when I saw him.

Q. How would you know what cars of kerosene or gasoline were for the Pure Oil Company if they were out on the switch tracks? 272

A. I got that information from the office on the slip.

Q. What information would you get from the office?

A. They had the invoice in the office and they looked it up there.

Q. Isn't it a fact all the gasoline and kerosene put on the tracks were for the Pure Oil Co.?

A. No, there was some other cars there, too.

Q. Of oil and gasoline?

A. Yes, sir.

Q. How often?

A. Quite often, pretty near every week there was some cars for other people.

Q. For the Indian Refining Company? 273

A. Yes, sir.

Q. That wouldn't be a very good place down there around your premises to make a fire test, would it?

A. No, I guess it wouldn't be very healthy to make a fire right there.

Q. You didn't make fire tests there yourself, did you?

A. No, sir.

RE-DIRECT EXAMINATION.

By Mr. Chase:

Q. I will ask you whether or not there is a chemical laboratory or room there on the premises of the Pure Oil Company in Minneapolis where your chemist is?

A. I don't know what you mean.

Q. Is there or is there not a room or place down there at the plant where a fire test of this kerosene could be

made?

A. Yes, sir.

Q. Where all the instruments are for that purpose?

A. Yes, sir.

Q. You have a chemist there?

A. Yes, sir.

Q. And he has a room?

A. Yes, sir.

Q. That room was there and the opportunity to make the fire test was there during this period, wasn't it?

A. Yes.

Q. You said in your testimony that some of the cars might be emptied that same day; was that the general rule?

A. No.

Q. Taking the cars by and large as they came in during that period were they emptied the same day they were set in on the switch track?

A. No.

Q. As I understand your testimony in answer to my questions, when you first went out there you would put down on a slip of paper the car number and the car initials?

A. Yes, sir.

Q. And possibly the question whether there was a shortage in quantity, etc.?

A. Not then, no.

Q. When you made your gravity test of either the gasoline or kerosene, on what slip of paper did you mark down that gravity test, if you did mark it down at all, on this same slip that had the car number and initials?

A. No, I had a special car report.

Q. When the deputy inspector would come in there during this period you have testified to, I understood you to testify that he asked you for the car initials and car number?

A. Yes, I always had the little slip hanging up on the wall by the desk.

Q. And the deputy inspector would take the slip and take them off from the slip on to his records?

A. Yes, sir.

Q. Did that slip at that time also contain the gravity of that car?

A. No, it didn't; they contained what is in the car, but I made out another report, because the gasoline or kerosene may be tested different; I didn't mark that on that slip.

Q. Did you have the gravity test of each car marked down on some other slip? 277

A. Yes.

Q. You had it marked down on what you call your car report?

A. Yes.

Q. Did you ever show that to the inspector when he came in?

A. No, sir.

Q. As I understand it he simply asked you for the specific gravity, or what your test was as to the specific gravity of each car?

A. Yes, sir.

Q. You then told him what your test was as to each car?

A. Yes, sir, except maybe a few times I was not in there; then he took the numbers of the car and the initial.

Q. What was usually the case, did he ask you for the 278 gravity test of most of those cars that came during that period?

A. Yes, sir.

Q. It would only be once in a while that he wouldn't get it?

A. That was a few times, yes, sir.

Q. You said that the deputy inspector stood around there until he got through?

A. Yes, sir.

Q. What else did he do besides come in and ask you these questions, during this period we are discussing?

A. That is all he did.

Q. How long, on the average, would the inspector be there each day?

A. He was usually there the same day. 279

Q. How long a time after he arrived, how long did he stay?

A. Stayed about three or four minutes, that is all.

Q. How long does it take to make the gravity test of kerosene and gasoline?

A. It depends. If you have to heat it up or cool it down it takes longer.

Q. After you have got your temperature of 60 degrees how long does it take?

A. Five or ten minutes.

Q. For each sample?

A. Yes, sir.

RE-CROSS EXAMINATION.

By Mr. Stevenson:

Q. Do you mean it takes five or ten minutes to read the

hydrometer after you have got the temperature?

A. It does if you take it right.

Q. Does it take five or ten minutes to read the hydrometer?

A. No, but you have to wait until it settles down and get the temperature.

Q. Suppose you have the temperature?

A. It don't take so long.

Q. Just long enough to dip it in and read the scale, it takes as long as it does to see whether it is ten below zero, or warmer?

A. I know, but if you have to take the right test you have to take three or four minutes.

Q. What do you do when you drop the hydrometer into the gasoline that has a temperature of 60 degrees?

A. Look what it is and mark it down. That is all that is necessary to take the gravity.

Q. You read the scale at the surface of the liquid?

A. Yes, sir.

Q. You drop the hydrometer down until it is covered with the liquid?

A. Yes, sir.

JOHN T. BALKAN,

sworn on behalf of defendant, testified:

By Mr. Chase:

Q. How old are you?

A. 26.

Q. You reside in St. Paul?

A. Yes, sir, for eight years.

Q. You have been employed in St. Paul by the defendant in this case for how many years?

A. Five years.

Q. In what capacity, generally?

A. As representative of the company in St. Paul.

Q. Are you acquainted with the movement of the cars that come in here to St. Paul or shipped in here for this defendant?

A. Yes, sir.

Q. What notice do you get, and when, with reference to the arrival of those cars?

A. The tank cars usually come in over the Great Western, and the Great Western calls us up anywhere from four to six and advises us by telephone there is a car coming in and will be set that night. The following morning we get a postal card in the mail with the car number and the initial from the railroad company, and the date.

Q. Then what do you do?

A. That is the following morning and I get the Minneapolis office on the line and advise them there is a car ready 283
to be unloaded, over the telephone.

Q. How long after you give that telephonic advice do they commence to unload the car?

A. They usually send a man over the day after that.

Q. The next day after you telephone?

A. The next day after I telephone, yes, sir. In other words, the car lies there all that day, we don't touch it.

Q. Do you go out when it is being unloaded?

A. Yes, sir.

Q. Do you go up at all?

A. Yes, I usually go down the morning I receive the postal card; I don't go down there when they call up because we wait until the following morning and go down there the first thing and take a sample out of the car and ascertain whether the car is short, the outage on it. 284

Q. Do you make any gravity test of the sample?

A. Yes, sir.

Q. Are those matters you are now stating matters that occur in the usual course of business—that occurred in the usual course of business during the period involved in this action, from February, 1913, down to April, 1915?

A. Yes, sir.

Q. Do you have anything but gasoline come in here?

A. No, sir.

Q. Is any of that gasoline drawn from the storage tanks into casks or receptacles, or is it drawn into tank wagons?

A. Most entirely tank wagons.

Q. I will ask you what inspection, if any, was made, with reference to the contents of those various tank cars that came in here, by the oil inspection department; do 285
you know whether they go out there and inspect or not?

A. They never go near it.

Q. How about this period?

A. I say they never go.

Mr. Stevenson: You are asked of your own knowledge.

Witness: This is my own knowledge.

Q. Have you ever known, during the period covered from February 1st, 1913, to April 25th, 1915, of any of the deputy oil inspectors or the state inspectors, or any employe of that department, having gone out there and taken a sample out of any of those tank cars that came in during that period?

A. He never took a sample; there was never a sample taken out by any inspector; there was a period of five or six weeks there used to be a young fellow would come there to the west side, and if he happened to be around

286 there when we were testing and taking the gravity of a car, of a sample, if he happened to be around that locality he would get the gravity right there on the spot.

Q. Did you make your gravity tests out there where the cars were being unloaded, at the point you unloaded them?

A. We did in the summer time, but not in the winter.

Q. Where did you take them in the winter?

A. At the office on Franklin street because we wanted to warm it up.

Q. What time was this six weeks' period?

Witness: When did you go into office, Mr. Rush?

Mr. Chase: Rush was not in during this period.

A. As I understand it this young fellow that came around is when Mr. Rush first started in.

Q. According to your recollection as to the time, irrespective of when Mr. Rush started in, was it in the year 287 1915, 1914 or 1913 this young fellow came around during this six weeks' period?

A. 1915.

Q. What part of the year 1915, early spring, summer, fall or winter?

A. It was in the spring.

Q. Apart from that six weeks' period of which you have testified have you ever seen any deputy inspector or chief state inspector, or any other employe of the oil inspection department, out there where those cars were placed for unloading?

A. No, sir, the only time I knew there was an inspector at all was when they used to call up on the telephone.

Q. I will ask you, during this same period from 1913, in February, down to April 25th, 1915, what, if any, in- 288 quiry was made of you from the oil inspection department, or any of its employes, relative to the gravity tests of those cars that were shipped in here?

A. Usually about the 1st of the month they would call up and say, "Give us a list of the cars you have in and of last month."

Mr. Stevenson: Who would call up?

Witness: The state inspector's office. I didn't know who the individual might be: "This is the state inspector's office; give me a list of your cars and car numbers, and gravity." We gave them a list. Usually in the summer time this run seven or eight cars a month; in the winter time about five. Then a few days after that we would get a whole bunch of those blank slips all filled out, in the mail. We got them about every month. We usually got all the way from—I know one time I was counting them up and I think I had ten of them. When I got them I was

quite surprised I got ten of them.

289 Q. When they called you up, in response to those telephone calls did you give them all the car numbers and initials and the result of your gravity tests as to all cars that had come since the last call?

A. Yes, sir, they would say, "The last car number is so and so; give me the rest."

Q. In each instance you gave them the result of your gravity test?

A. Yes, sir.

Q. Are you able to state whether those slips they mailed to you you have just testified with reference to, showed the same gravity tests as to these different cars that came in, as the gravity test you gave them over the 'phone?

A. I never checked them up; they came in a bunch; I supposed it was a matter of form and I put them in an envelope and sent them to Minneapolis. 290

Q. You never checked up to see whether the slips mailed you corresponded with the gravity test you gave them?

A. No, sir.

CROSS EXAMINATION.

By Mr. Stevenson:

Q. You say your office is Ninth and Franklin?

A. Yes, sir.

Q. In a part of the city of St. Paul?

A. Yes, sir.

Q. How far is it from the office to your storage tank?

A. I guess it is about 16 blocks.

Q. To the storage tank from your office?

A. Yes, sir.

Q. Where is your storage tank?

A. You know where the Great Western freight house 291 is down here on South Robert street; it is a block from the east end of the Great Western freight house.

Q. On the West Side?

A. Yes, sir.

Q. How far from the Robert street bridge?

A. How many blocks?

Q. How far is it?

A. I never saw a map of the city; I would say about three blocks.

Q. Is your storage tank on the bank of the river?

A. No, sir.

Q. What direction from the end of the Robert street bridge?

A. East.

Q. That would be down the river from the bridge?

292 A. No, you go across Robert street bridge and follow the street; whether it is east or south, I don't know; you follow Robert street; you don't go down the river.

Q. Have you any office at the storage tanks?

A. We have a warehouse over there; no office. There is a desk in there; you wouldn't call it an office.

Q. No pump there except a hand pump?

A. Just a hand pump, yes, sir.

Q. Do you keep a man over there all the time?

A. No, sir.

Q. There is nobody there except when you go there, or when the man goes there to empty a car?

A. The tank wagons and trucks are there about every hour.

Q. They load their own wagons?

A. Yes, sir.

293 Q. So there is really nobody in charge of the place constantly?

A. Nobody on the job every minute of the day, no.

Q. When you are notified a car is going to be put in there in the morning you don't go over until you are sure the car is there?

A. That train comes in about two o'clock; the Great Western calls up in the afternoon, and if I happen to be on the West Side I go down there instead of waiting until morning, and when it has been set the yardmaster would tell me where it was and I would take a sample at that time.

Q. It is usually set by the railroad company before you see it?

A. Yes, it is usually set unless something goes wrong.

294 Q. Is that a little spur track that runs to the storage tank and ends there?

A. I don't know.

Q. How many tanks have you there?

A. Two.

Q. For two different grades of gasoline?

A. Yes, sir.

Q. Ordinarily then, you don't go over until the next day after you are notified that the car has arrived?

A. I go over there in the morning, and then the day following that a man comes and pumps out the tank.

Q. How long are you over there getting your samples?

A. If I take the gravity there I am probably there 15 or 20 minutes.

Q. If you don't take the gravity there how long are you there?

A. It takes 15 minutes, you have to fuss around, open up the car and get a bar and open it up. 295

Q. You bring your sample over to the main office?

A. Only in the winter time; it is no sense to carry it back and forth in the summer time.

Q. You don't know whether it is the deputy inspector, or the chief oil inspector, that calls you up the 1st of the month for your car numbers?

A. Did Mr. Eaton used to be the inspector?

Q. Guy Eaton, yes.

A. Sometimes it would be him, sometimes it would be his assistant would say, "This is Mr. Eaton, give me the cars," or "This is the assistant inspector, give me the cars." They would call up and say, "This is the state inspector's office, Mr. Eaton; give me the list of cars, the initials; the last one you gave me was such a number; give us those you have since." 296

Q. That was the information they were using for checking up the deputy?

A. Why would they want to check him up? They were using it for their records.

Q. You don't know whether they wanted it for the purpose of checking up the work of the deputy?

A. They might have wanted to do that; I was given to understand it was for their records; in fact, I asked what they wanted that information for.

FRANK P. KELLY,

sworn on behalf of defendant, testified:

By Mr. Chase:

Q. You are an employe of this defendant company?

A. Yes, sir. 297

Q. And have been an employe of that company for how many years?

A. About 9½ years.

Q. There has been some testimony here by Mr. Danielson to the effect that he notified Mr. Kelly at the time of the arrival of these various cars during the period covered by this action; are you the Mr. Kelly?

A. Yes, sir.

Q. What did you do when you were notified as to the arrival from time to time of these various tank cars of gasoline and kerosene?

A. I at once called the deputy inspector over the 'phone.

Q. How soon would you call the deputy inspector over the 'phone after Mr. Danielson notified you?

A. Right away, or in a very few minutes.

CROSS EXAMINATION.

298 By Mr. Stevenson:

Q. Where did you 'phone to Mr. Nillson?

A. I would 'phone to his office; sometimes I didn't find him there and I would 'phone to his house.

Q. He always asked you how many cars there were?

A. Usually.

JOHN HANCOCK,

re-called on behalf of defendant, testified:

By Mr. Chase:

Q. You have testified that during the period covered by this action that the total quantity of gasoline involved in this suit, approximately 100 tank cars, were received here at the St. Paul end, 100 or 120; are you able to state approximately what that total would aggregate in barrels?

299 Taking the average run of tank cars, would you say that 8,000 gallons each, or thereabouts, represents in the neighborhood of what there was?

A. About 100 cars at 8,000 gallons would be about 145,000 barrels.

Q. It would average about 145 barrels to the car?

A. Yes, sir.

L. B. HANCOCK,

re-called for further cross examination, testified:

By Mr. Stevenson:

Q. Do you have charge of the office of the company?

A. Yes, sir.

Q. And of the sales?

A. No, not exactly.

Q. Who has charge of the sale part?

300 A. We have a sales manager.

Q. You received these oil inspection certificates? They were sent to you from day to day?

A. Our office received them.

Q. You knew they were being received at the office?

A. Yes, sir.

Q. And what did you do with them when you got them?

A. I don't think anything was done with them.

Q. Did you make out from time to time reports to the chief oil inspector of out-shipments of oil?

A. Yes, sir.

Q. During all this period, or the greater part of it?

A. I think so; at least since the time this suit has come up.

Q. There are out-shipments credited to your company on those monthly statements; that are made of fees that

must represent the reports you made month after month to the chief oil inspector? 301

A. I won't say they were made every month; they may have been made from time to time.

Q. Each month you received from the chief oil inspector a statement of the fees that you were owing the state for inspection of the preceding month?

A. I think so.

Q. During any of this time did you notify the chief oil inspector, or any state official, you were not going to pay these inspection fees, during the time covered by this suit?

A. I think so.

Q. When?

A. About the time,—perhaps a month or two months before this suit was started.

Q. But not before that? 302

A. I think not.

Q. So you may not be misunderstood, you did have some dispute with the state oil inspection department about the cars of naptha?

A. Yes, sir.

Q. That was in May or June, 1913?

A. I couldn't say as to that.

Q. How many different grades of gasoline do you sell at your filling station to the public?

A. Four.

Q. All the year around do you have four?

A. We don't sell them the four at all stations, but all told we have four grades.

Q. One of those is sold by trade name, or brandage?

A. All of them are. 303

Q. The grades are based upon specific gravity?

A. Not exactly, no.

Q. You keep in each tank the gasoline of a certain specific gravity?

A. And qualities.

Q. How many storage tanks do you have for gasoline?

A. Nine or ten.

Q. Do you mean to say you base your grades of gasoline you sell on more than specific gravity, or anything else than specific gravity?

A. Yes, sir.

Q. What is the specific gravity of the cheapest gasoline you sell?

A. 60, 61, 62, somewhere around there.

Q. And what is the next highest priced gasoline you sell?

304 A. I think 64 gravity, or 65.

Q. How much difference is there in price between the cheaper grade you have just mentioned, and the 64 or 65, retail price?

A. I am not posted on prices, but as near as I know it is about two cents.

Q. Your selling price?

A. Yes, two cents a gallon.

Q. Isn't it four cents usually?

A. No, I don't think so.

Q. Then what is the next grade of gasoline above that, in quality?

A. You mean the gravity of it?

Q. Yes.

A. 68 to 70.

Q. That sells at how much more than the second
305 grades?

A. As I say, I am not posted on prices; as near as I can recall it is between three and four cents.

Q. What is the next higher grade?

A. We have a grade of 70 gasoline, or did have during this period.

Q. What is the price of that above that of the next lower quality?

A. All those are regulated by the market, and there might be at this time five cents, but at the time covered by this suit it might have been three cents, but there is always a difference.

Q. The same is true in the buying of the gasoline from the refinery, is there not?

A. What do you mean?

306 Q. That the higher specific gravity costs more than the lower?

A. Usually.

Q. It is billed to you by the refinery as being gasoline of a certain specified gravity?

A. The gravity is generally specified.

Q. Is there anything else specified on the invoices?

A. Not ordinarily.

RE-DIRECT EXAMINATION.

By Mr. Chase:

Q. Who had charge of the selling department?

A. Mr. Hurd.

Q. When did you first know or become aware of the fact that no inspection of the product here in controversy was being made by the oil inspection department?

A. About the time this suit was commenced, or just

before the time.

Q. That is the first personal knowledge you had? 307

A. Yes.

MATHEIS J. DESMOND,

sworn on behalf of defendant, testified:

By Mr. Chase:

Q. You reside in St. Paul?

A. Yes, sir.

Q. And have for a number of years last past?

A. Yes, sir.

Q. And are at present employed in the state auditor's department, the department of the state auditor of the state of Minnesota?

A. Yes, sir.

Q. And have been employed in that department for how many years, approximately? 308

A. Going on 14 years.

Q. Do I understand that at present you are what is known as the chief bookkeeper in that department?

A. Yes, sir.

Q. And have occupied that position for how many years?

A. About ten years.

Q. I will ask you whether your duties as chief bookkeeper in that department have resulted in making you familiar with the general system of accounting in that office and department?

A. Yes, sir.

Q. As far as the same relates to all and several the various so-called funds, special funds, or general funds, handled through that department? 309

A. Yes, sir.

Q. I will ask you whether or not you are familiar with what might be called the disposition, so to speak, as a matter of bookkeeping, with the various funds that are received and disbursed by the State?

A. Yes, sir.

Q. I will ask you whether or not in your system of bookkeeping in the state auditor's department you have an account known as the oil inspection fund, or account?

A. We have an oil inspection account.

Q. And that account, as I understand it, contains the receipts, on the one hand, from the inspection fees during each fiscal year, and also the disbursements made by and relating to the oil inspection department?

A. Yes, sir.

Q. For that same fiscal year?

A. Yes, sir.

310 Q. I will ask you whether or not there is maintained by the state, outside of the matter of bookkeeping, a so-called oil inspection fund, that is, kept separate and apart from the general revenue fund of the state, as a matter of fact?

Mr. Stevenson: Objected to as calling for a conclusion of law as to whether or not such a fund—the statute provides that fees do go in that fund.

The Court: I don't see how the validity of this inspection law can depend on the matter of bookkeeping. The objection is sustained.

Exception by defendant.

Q. I will ask you whether or not this oil inspection account so kept in your office shows, from and including the fiscal year ending July 31st, 1910, down to and includ-
311 ing the fiscal year ending July 31st, 1914, a surplus or excess of money received from inspection fees of the oil inspection department, over and above the amount shown by your account to have been disbursed on that account?

The Court: Doesn't your stipulation cover that?

Mr. Chase: This is preliminary.

A. No, it does not show an excess.

Q. Take, for instance, what I am getting at is this: It is stipulated here between counsel in this case that your books in your office show for the fiscal year ending July 31st, 1910, receipts $50,667.67, and that there was disbursed for that same corresponding period, $40,044.24.

A. That is accounts.

Q. What is done in your office as a matter of bookkeeping, with the surplus there shown of receipts over and
312 above the amount shown to have been expended, what do you charge it to?

Objected to as irrelevant and immaterial.

The Court: If the State has the right to collect fees it has a right to do what it pleases with the money. The objection is sustained. Exception by the defendant.

Mr. Chase: We offer to show by this witness that under the system of accounting in operation in the department of the state auditor of the state of Minnesota during the entire period covered by the operation of the oil inspection law of 1909, that any and all surplus shown by the books of that department at the end of each fiscal year, by taking the difference between the amount of inspection fees received by that department during the year, and deducting therefrom the amount shown by the books of that department to have been disbursed under that account, and for

that corresponding year, was in each instance credited to 313
the so-called general revenue fund of the state.

Objected to as irrelevant, immaterial and inadmissible under the pleadings.

Objection sustained. Exception by defendant.

Q. The state has a so-called general revenue fund, has it not?

A. They have what is called a revenue fund.

Q. And has had such fund since the year 1909, a revenue fund?

A. Starting with the state; it was there before I came.

Q. In a general way, what does that fund represent and stand for, that term general revenue fund, in your auditor's report?

Objected to as calling for a conclusion of law.

Q. What does it represent?

The Court: The law states that. 314

Objected to as irrelevant and immaterial, and calling for a conclusion of law.

Objection sustained. Exception by defendant.

Q. I will ask you whether or not at the end of each fiscal year, commencing with the fiscal year ending July 31st, 1910, the amount of expenditures shown by your books under this oil inspection account, has equalled the amount of the receipts for that particular fiscal year shown by the books of your account?

Objection to as repetition, and not an issue in this case.

Mr. Chase: This is preliminary.

The Court: He may answer; I think you could assume that that was established by your stipulation.

Q. It has been stipulated here, as shown by the biennial reports from the state auditor's department, that dur- 315
ing the past five or six fiscal years, meaning thereby years ending on the 31st of July in each year, the receipts from fees from the oil inspection department turned into the state treasury, has exceeded the amount disbursed each fiscal year for the use of the oil inspection department alone in the conduct of the business of this department. Now, I will ask you whether or not or to what do you credit in your account the fees received from the oil department; what account does it go into, the general revenue fund?

Objected to as irrelevant, immaterial and asking for a conclusion of law.

Mr. Chase: As a matter of bookkeeping.

The Court: The objection is sustained. If there is anything to that point I think counsel has covered it.

316 Mr. Chase: We offer to prove by this witness that all moneys received as fees from the oil inspection department during the operation of the oil inspection law of 1909 during the period covered by this action, have been credited to the general revenue fund of the state, and that all disbursements, of which account has been made in the auditor's department, have been charged to the appropriation for that department made by the legislature of the state of Minnesota. I further offer to prove by this witness that any and all excess of receipts during the period covered by this action from fees in the oil inspection department, over and above funds disbursed for the maintenance and operation of this department have at all times gone into the general revenue fund of this state and have been used from time to time in defraying the general expenses of the state government, in the same method and manner as are
317 the taxes collected by the state for paying general expenses incident to the government of this state.

Same objection.

The Court: The objection is sustained on the ground that the law itself provides for the disposition of these funds, and that the validity of the law cannot be affected by any transgression of its terms by a mere administrative officer of the state.

Exception by defendant.

Defendant rests.

A. N. ABBOTT,

sworn on behalf of plaintiff in rebuttal, testified:

By Mr. Stevenson:

318 Q. Where do you live?

A. Minneapolis.

Q. What is your business?

A. With the Penn Oil & Supply Co., Limited.

Q. What is your connection with that company?

A. Assistant secretary.

Q. How long have you been engaged in the oil business?

A. 16 years.

Q. Where were you before you came to Minneapolis?

A. Oil City.

Q. In whose employment?

A. The same company, and the refinery.

Q. What is the scope of the business of that company?

A. They have a general business over the central and northwestern states.

Q. Dealing in what?

A. Oils, gasolines and greases.

Q. As wholesalers?
A. Wholesalers and jobbers. 319
Q. Do they do a retail business, selling?
A. They do a tank-wagon business.
Q. What is the nature of the business in Minneapolis?
A. It is a jobbing and tank-wagon business.
Q. Does this company have its own refineries?
A. Yes, sir.
Q. Has your experience with the company been that of an employe, or officer, in any of the refineries?
A. I have been in the refinery for 15 years.
Q. How long have you been in Minneapolis?
A. A year last September.
Q. Do you know the manner in which the refineries throughout the United States offer their gasoline for sale, that is, what grades they offer, and the basis of their grades? 320
A. Yes.
Q. This knowledge covers the period for the last three or four years?
A. Yes.
Mr. Chase: Have you any personal knowledge as to any other refinery than the Penn Oil & Supply Co. as to the grades they are offering?
Witness: Yes, sir.
Mr. Chase: How was that obtained?
Witness: I am interested in another company.
Mr. Chase: That is a refinery in the East?
Witness: Yes.
Mr. Chase: Have you been conversant with that refinery and its methods of doing business within the last year? 321
Witness: Not during the last year.
Mr. Chase: During the last three or four years?
Witness: Yes.
Q. Does your company buy the gasoline through other refineries than your own?
A. Yes, sir.
Q. You buy in the open market?
A. Yes.
Q. What is the basis of the grades—what are the grades that are commonly known in the wholesale trade?
A. They run from 70 down to 58, as a rule; there are some higher grades, but that is the general.
Q. You mean the specific gravity of the product?
A. Yes, sir.
Mr. Chase: Down from 70 to 58?
Witness: Those grades that are generally used; there

322 are other grades used.

Q. Is there any difference in the price of the different specific gravities?

A. Yes, sir.

Q. Does the wholesaler make a difference in the price?

A. Yes, sir.

Q. You may state what the usual grades are, between what degrees, and the difference between the wholesale price of one grade and the next.

A. There is 60 to 62 is the common automobile grade, and that price is now 17½; then there is the 62 to 64. You can make any grade by having the oil and grading and mixing just as they want it.

Q. I am talking about regular grades you find quoted by refineries.

A. There is a grade retailing here at 17½; another
323 grade at 22½ and 24½ that we are handling here in the city as the regular grades; then we get in between.

Q. Those are the regular grades running 60 to 70?

A. 60 to 68 or 70.

Q. And the lighter the gasoline the higher the price?

A. That has been the custom, and it is.

Q. Do you know anything about the retail market, and the way in which the retailer disposes of his gasoline in Minnesota?

A. Nothing except the tank wagons and garages we sell to.

Q. Do the companies generally make a difference in the price of the different specific gravities in gasoline?

A. You mean the retail?

Q. Yes, at retail.

324 A. I couldn't state that; they generally take what they call the high test and the low test.

Q. Which is higher in price?

A. The high test, as they call it.

Q. That means specific gravity?

A. Yes, the higher gravity.

Q. The lighter gasoline?

A. Yes.

Q. You may state, in your opinion, whether the specific gravity of the gasoline used commercially in Minnesota indicates its quality or value in the market?

A. It does; it determines the values among the dealers.

Q. Do you know whether or not the specific gravity of gasoline determines its tendency to vaporize into an explosive vapor?

A. It does.

Q. Which is the most liable to vaporize first?

A. The higher specific gravity.
Q. That is, the higher priced, higher gravity, is the most explosive? 325
A. Yes, sir.

CROSS EXAMINATION.

By Mr. Chase

Q. How long have you been in Minneapolis in connection with the plant?
A. A year last September.
Q. What, in a general way, are your duties there?
A. I am in the office.
Q. And that has been the case since you have been there?
A. Yes, sir.
Q. Did you come directly there from the refinery?
A. Yes, sir.
Q. You had been connected with the refineries how long? 326
A. 15 years.
Q. What were your duties down there?
A. In the office; I was assistant manager there.
Q. Had you, during the time you were connected with the refineries, been taking any tests of gasoline yourself?
A. No, sir.
Q. You are not a chemist?
A. No.
Q. You haven't had any study in that line?
A. No, except the general oil business.
Q. You say you never made any of the gravity tests?
A. I made gravity tests.
Q. Very often?
A. No, not as chief. 327
Q. Did you ever have anything to do with the distillation tests of gasoline?
A. No, I have been in the tail house when they have been cutting them off.
Q. Was any of the product shipped out from your refinery during the last three or four years you were there, based on what was called and known to the refinery trade as blended gasoline?
A. No.
Q. You never shipped any?
A. No, never made any.
Q. Would you have known it if they had?
A. Yes, sir.
Q. Had you anything to do with the mixing or preparing of the gasoline that was shipped out?

A. No, the still men do all that.

328 Q. Did your refinery handle any casinghead gasoline during the period you were there?

A. No, not the refinery.

Q. Did you purchase any of it; was any of it used at the refinery; did it pass through the refinery?

A. No, sir.

Q. Was it handled by the refinery?

A. No.

Q. Did you handle any blended products?

A. No.

Q. Then you never had any personal experience with blended gasoline?

A. Yes, we have on the stations.

Q. Where?

A. In Minneapolis, here.

329 Q. None at the refinery?

A. No.

Q. You never had any experience of that, at all?

A. No.

Q. You are not then prepared to testify as to gravities and qualities of blended products?

A. Except seeing the use of the blended goods.

Q. I mean from a gravity test, you never personally made a gravity test of a blended gasoline?

A. I have since I have come to Minneapolis.

Q. How could you tell from the gravity test whether it was blended or not?

A. You couldn't tell from the gravity test, you would have to make an evaporation test.

Q. I understood you to testify that your gravity test

330 was an indication of quality?

A. It is on the straight-run goods.

Q. And you will qualify it to that extent?

A. Yes, sir.

Q. But it is not a test as to the blended product?

A. No, sir.

Q. The gravity test does not show whether the product so tested is straight-run goods or blended product, does it?

A. No, you can't make it by the gravity test; you have to make the evaporation test.

Q. It is possible, is it not, that by the process of blending you may obtain a gasoline product that will show 70 gravity that would be lower in the wholesale price at least, than a straight-run gasoline product of the same gravity?

A. Yes.

Q. So that it doesn't always follow that the lighter the

gasoline, the higher the price?

A. It does on the straight-run goods. 331

Q. That would only follow on straight-run goods?

A. Yes, sir.

Q. And it would not be applicable to a blended product?

A. It works just the opposite on the blended.

Q. Are you acquainted with what is commonly known in the trade as motor spirits?

A. No, except by name, by hearing it.

Q. You have no personal acquaintance with that?

A. No, sir.

Q. Do you know, having reference now to a specific gravity,—do you know what was regarded as gasoline commercially in this state during the period from February, 1913, up to the latter part of April, 1915?

A. During that earlier period they used a higher gravity than they do now. When I first commenced, we had to use a 70 and then we got down to 68-70 and now they are using as low as 60, and some 58. 332

Q. 60-58 has been comparatively recent?

A. No, that has been in use for a couple of years.

Q. What time did you come here?

A. I came here a year ago in September.

Q. Do you know anything about what was used here commercially, what the different grades were, before you came here?

A. Except through hearsay; our office here has advices of the grades they are using.

Q. From your own knowledge?

A. No, not personally.

RE-DIRECT EXAMINATION. 333

By Mr. Stevenson:

Q. You knew what your office was selling before you came here, in Minneapolis?

A. Yes, sir, I was familiar with that.

Q. Do you mean to be understood as saying that 68 and 70 blended gasoline is not worth more either in the wholesale or retail market than 60-62 blended gasoline?

A. They are charging more for it.

Mr. Chase: We move to strike out the answer as not responsive to the question.

The Court: The answer may stand.

Q. Do you mean at wholesale?

A. Wholesale and retail.

Q. Is the 68-70 blended gasoline quoted higher on the market than a 60-62 straight-run gasoline?

A. It is just about the same price now as the 60.

334 Q. At times it is quoted higher?

A. Yes, at times; at the present time it is about the same price.

Q. Referring solely to the blended gasoline, let me ask you if the specific gravity of that product always indicates its tendency to evaporate, its volatility?

A. It does, to a certain extent.

Q. The lighter the blended gasoline is, the quicker it will evaporate?

A. Yes.

Q. Or, the quicker it will begin to evaporate?

A. Yes, and evaporate.

Q. Do you know how the still men who have charge of the refinery, determine the quality of the distillate or gasoline they are distilling from the still?

335 A. They regulate that by cutting off through what they call the tail-house all the vapor from the still after it is condensed and goes through glass boxes and they make tests there and cut it into different tanks.

Q. What test do they make in the tail-house to determine when they will make the cut-off in the still?

A. They generally run that down to about 50, or used to.

Q. Is that only a test of the specific gravity?

A. Yes, that is all.

RE-CROSS EXAMINATION.

By Mr. Chase:

Q. Would you consider that under the present method of operating these refineries at this time, they are making a gasoline, or producing a gasoline of lower specific gravi-

336 ty that is really of a higher quality than indicated by that same specific gravity two years ago?

Objected to as irrelevant and immaterial.

The Court: Objection overruled.

A. I don't know anything about any difference in the quality.

N. C. BEIN,

sworn on behalf of plaintiff in rebuttal, testified:

By Mr. Stevenson:

Q. You live in Minneapolis?

A. Yes, sir.

Q. What is your business?

A. I am with the W. H. Barber Agency.

Q. What is the business of that agency?

A. We are jobbers and brokers of oils and gasolines, and kerosenes and naval stores.

Q. How long have you been with the company in Min- 337
neapolis?

A. A little over two years.

Q. What particular business do you do yourself?

A. I am vice-president and treasurer, sell some goods and call on the trade.

Q. Are you familiar with the quoted grades and prices of refineries of gasoline in the United States

A. Yes, particularly the western refineries.

Q. And have been so familiar all the time you have been with the company?

A. Yes, sir.

Q. What grades of gasoline are quoted in the oil and gasoline markets for the last two years?

Mr. Chase: Objected to as the witness has only been here two years.

The Court: He can go back to the earliest point he 338
knows.

Q. During the time you have been with the company at Minneapolis?

A. It has changed somewhat; we used to get western gasoline from a 60 gravity up to 68; now we are getting 58-60 gravity as well.

Q. Between these two points, how many grades of gasoline do the refineries make in their quoted prices or in their quoted offers of sale?

A. Most of them quote a differential of two degrees, 58 to 68 or 70, and there is more sold at 60-62 than any other grade.

Q. Is there any difference in price in those grades?

A. Of the same quality of gasoline, yes.

Q. Which is the higher price? 339

A. Of the same kind of gasoline of the same crude, the higher gravity is the highest price.

Q. Would you say that the gravity test of gasoline is any indication of its value or quality in the markets?

A. It is, in so far as you know where it comes from.

Q. The refinery sells it on the specific gravity grade, does it?

A. Partly so, but when we sell 68-70 gasoline we consider where that comes from.

Q. On the other hand, you sell gasoline to the retailers in Minnesota?

A. No, we sell to the jobbers in Minnesota.

Q. You use the same specific gravity grades in selling?

A. Yes.

Mr. Chase: What do you mean?

340 Mr. Stevenson: That the refinery sells.

Q. There is some testimony here concerning blended gasoline; do you know whether blended products sell ordinarily at the refinery on its specific gravity?

A. It sells on its specific gravity, and also on its end point, their distillation test.

Q. Is blended gasoline the same price ordinarily in the markets as the straight-run gasoline of the same specific gravity?

A. No, the blended is cheaper.

Q. How much cheaper, ordinarily?

A. It varies. Last summer 68 blended sold at the same price as 60 straight-run, now there is little difference.

CROSS EXAMINATION.

By Mr. Chase:

341 Q. When did you say you started in with the Barber Company?

A. Two years ago, a little over.

Q. Had you been engaged in the oil business in this state before that?

A. Yes, sir.

Q. With what company?

A. The Twin City Oil Company.

Q. Do you know, as a matter of fact, that during the period of the year 1913 that in the oil trade generally, retail oil trade in Minneapolis, that trade supplying the retail dealers, no gasoline was put out by that trade as gasoline that showed a specific gravity under 60?

A. Yes, sir; that is true.

Q. It is during the year 1915 that they have commenced to grade gasoline down to 58-59?

342 A. Yes, sir.

Q. You never have had any practical experience in distilling, have you?

A. I made no gasolines, but we occasionally make distillation tests at the office at our plant, on tank cars.

Q. You consider that to be the only accurate test as to quality?

A. Your end point is the most important thing.

Q. By that you mean a distillation test?

A. Yes, sir.

Adjourned until 10 o'clock A. M. February 5th, 1916.

EDWARD H. PAYTE,

sworn on behalf of plaintiff in rebuttal, testified:

By Mr. Stevenson:

Q. Your name is Edward H. Payte?

A. Yes, sir.

Q. You live in St. Paul?
A. Yes, sir. 343
Q. You were Deputy Oil Inspector under Guy Eaton, Chief State Oil Inspector, were you not?
A. Yes, sir.
Q. How long were you such deputy?
A. Four years.
Q. And ending, when?
A. March 26th, 1915.
Q. What territory did you cover with your inspections?
A. I had the West Side stations, and many months I had the entire county of Ramsey.
Q. During all that time did you have in your territory for inspection the West Side plant of the Pure Oil Company?
A. I think when the Pure Oil Company put in its station, Mr. Parker, the deputy, made the inspection for a 344
little while, and after that I made the inspections.
Mr. Chase: We move to strike out the answer as to Mr. Parker, as incompetent, irrelevant and immaterial.
The Court: That portion except the actual making of the inspection may be stricken out.
Q. The time involved in this action is from February 1st, 1913, up until a few weeks after the close of your connection with the department. Did you have charge of the Pure Oil Company's St. Paul plant during that time?
A. Yes, I did.
Q. Did you keep any record of the inspections you made of their gasoline during that time?
A. I did.
Q. How often did you go to their plant on the West Side?
345
A. Well, it would vary; generally I had two or three plants right there, go by nearly every morning, but there was very few cars that the Pure Oil Company got in there and when the track was vacant, I never stopped there; I went by there, near there though.
Q. Were you ever notified by the Pure Oil Company that a car had arrived at that plant?
A. Never.
Q. How would you ascertain there was a car for inspection?
A. I would go down through the yards and check the yards.
Q. What yards do you mean?
A. The Great Western.
Q. Whenever you found a car of gasoline for the Pure Oil Company there in the yards or at their storage tanks,

346 what did you do?

A. I would wait around there until somebody opened up the small station they had there, to ascertain if it belonged to them; I always knew it belonged to them, because the Craig and the Independent and Standard Can were also there; if the car didn't belong to one of those three companies, it belonged to the Pure Oil Company.

Q. Then what did you do?

A. If somebody was around there, the car was there, I would inspect the car from gasoline we had in the shop, or, I have in some instances, asked a man who was in charge over there, to get me a sample out of the car.

Q. If the man in charge had a sample for you, what did you do with the sample?

A. I would test it.

Q. Did you ever find they had unloaded a car without

347 notifying you?

A. Yes.

Q. During this period?

A. Yes, I think cars were unloaded; in fact, I was notified.

Q. It is admitted in this case that certificates of inspection were issued for the inspection of tank cars with gasoline at St. Paul during this period, for the Pure Oil Company; were those certificates made by you?

A. Yes.

Q. When did you make those certificates, with reference to the time you made the inspection?

A. Sometimes it was a week afterwards, or near the end of the month.

Q. What did you do with those certificates when you

348 made them out?

A. Sent one to the Pure Oil Company and one to the State Oil Inspector.

Q. Where did you address them to the Pure Oil Company?

A. Ninth and Franklin streets, St. Paul.

Q. I show you plaintiff's Exhibits B and C and I will ask you to tell what those are, in a general way.

A. They are oil inspection slips, state of Minnesota, inspection of two cars of gasoline.

Q. State whether or not those are duplicate originals of the ones given to the Pure Oil Company?

A. Yes, sir.

Q. In the course of your inspection work?

A. Yes, sir.

Q. Are they carbon impressions of the originals?

A. Yes, sir.

Mr. Stevenson: We offer in evidence plaintiff's Exhibits B and C, as samples of the certificates so issued. 349

No objection. Received.

Q. It is in evidence here through the testimony of Mr. John Hancock, that during all this period I have mentioned, the Pure Oil Company received an average of one car of gasoline per week at its storage tank in St. Paul. You may state what your estimate would be of the number of cars of gasoline so received, that you know of.

A. Well, I have a record in my office, but I would say an average of one car a week—I would say that was about five or six cars; when they first started business they had a very few cars; afterwards their business increased. I would say five or six cars a month; I wouldn't want to be positive, but I have a record of that in my office.

Q. During your deputyship, did you inspect that many cars per month for the Pure Oil Company, on the average? 350

A. I don't think the first few months, but after that I should say it would average about that; their business increased; for the first few months over there, there were very few cars. It might have been a period of five or six months before it became that average, that is my best recollection.

Q. Did you actually inspect the contents of every tank car of gasoline in the manner provided by statute, for which you issued an inspection certificate during all this period, for the Pure Oil Company?

A. I practically intended to do so, but there were cars unloaded and put in the tanks, and I inspected the contents, which were told me were the contents.

Q. In what way did you inspect the cars after the cars had been unloaded? 351

A. Hydrometer tests of the samples I had obtained there.

Q. From the car?

A. I don't know whether it was the specific car, because it had been unloaded; but it would be the contents of the tank the car was unloaded from.

Q. Did the Pure Oil Company have any samples saved for you?

A. It was around there, yes.

Q. Was any statement made to you as to where the sample was obtained?

A. Out of the pumping station, out of the tanks that were there.

Q. Out of the tank cars that had been unloaded in your absence?

A. Yes, sir.

352 Q. How many times during this period of 27 months, would you say that it happened that a tank car was unloaded in your absence and you were not given the opportunity of inspecting the contents while in the car, or of obtaining your own sample from the car?

Mr. Chase: We object to that part of the question which says he was not given an opportunity.

Mr. Stevenson: He says they never notified him.

The Court: I take it this question goes only to the cars that were unloaded before he knew of their arrival.

Mr. Chase: I have no objection to that.

A. There was a great many instances, I couldn't say the number.

Q. Could you give any estimate of what proportion of the cars were so unloaded before inspection?

A. It would be a hard thing to say; I wouldn't want
353 to attempt to say, but as long as I got the test from the contents of the car I didn't want to hinder the Pure Oil Company from unloading their tanks, in any way.

Q. Your only experience or knowledge of whether the sample you inspected was from that car would be from the information the company would give you, or its samples?

A. Yes, lots of times I inspected myself and I asked the man that was there if he would get a sample of that car.

Q. I mean as to the identity of that car.

A. It might have been intermingled, but it would be in the tanks on the right-of-way or the track of the Great Western Railway. That station was not kept open; lots of times it was closed entirely, nobody there except when
354 they are pumping some cars.

Q. Did you ever open the tank cars while they were in the yards of the railway company before they were switched over to the storage tank?

A. No.

Q. Have you checked up your records with the car numbers, the contents of which the state claims were inspected at St. Paul, in this suit?

A. No.

Q. You say that during this period involved in this suit you were in charge of this territory in which the Pure Oil Company's storage tanks were situated in St. Paul?

A. Yes, the latter part extends into April, does it not?

Q. Yes.

A. I was not an employe during the month of April.

Q. Do you know who succeeded you?

A. Yes, sir.

Q. Who was it?

A. A gentleman by the name of Ryan. 355

Q. He covered the same territory after you, in the service?

A. I presume he did; I took him around myself for a week after I left the service.

CROSS EXAMINATION.

By Mr. Chase:

Q. If I understand it, you were employed in the capacity of which you have testified, as far back as February, 1913; that would be practically three years ago?

A. No, it would be March 7th, 1913.

Q. Then the time to which you have testified ran from March 7th, 1913, down to the latter part of March, 1915?

A. March 26th, I think, 1915.

Q. What way would you have of knowing what tank 356
cars over there in the yards were billed or were consigned to the defendant in this case?

A. The Craig Oil Company, the Independent and Standard had their stations there and if there was a car in the yard I couldn't acount for, I always figured it belonged to the Pure Oil Company, and I would ascertain from one of the men that were there.

Q. You would ascertain from one of the Pure Oil Company men?

A. Yes, sir.

Q. Who did you ascertain from, who were some of the men you met and asked?

A. They were strangers there every month; sometimes there was a man there who could hardly understand the English language, but they had their invoices in the little station there and I used to read them and check them. 357

Q. The invoice of course showed the car number and the initials?

A. Yes, sir.

Q. Did you ever meet Mr. Balkan there?

A. No, sir; not to my knowledge.

Q. Did you ever meet this gentleman up there during that period (Mr. Balkan standing in court room)?

A. Not to my knowledge; I might have; I don't know.

Q. Do you know him?

A. No, sir; I don't.

Q. Were you up around the yards there every day?

A. I wouldn't say every day, no, but nearly every day.

Q. Did you ever take a sample from any particular tank cars before they were unloaded?

A. No, sir.

358 Q. Why?

A. I wanted to ascertain first if they belonged to you.

Q. You have testified as to how you ascertained?

A. Yes, I have taken them while they are being unloaded.

Q. Didn't you ever get there and see an invoice that showed you that car belonged to the defendant, didn't you ever get there before it was unloaded and see that invoice, in all those times you have been there?

A. Before it was unloaded?

Q. Yes.

A. That I took the invoice number?

Q. Yes.

A. I might have done it and I wouldn't swear I didn't.

Q. It would have been possible under those circumstances to have taken a sample from the car before it was
359 unloaded, for you to have done so?

A. Yes, it might.

Q. You said in your direct examination if somebody was around you would inspect the car; why was it necessary for somebody to be around; couldn't you open up the car and take the sample alone as well as if some of the employes were around?

A. I was not sure that it belonged to the company.

Q. Take those instances where you knew it belonged to us by seeing the invoice, you didn't have to wait until some of our employes were around to take the sample, did you?

A. I couldn't get into the place the majority of the time.

Q. The car was outside on the track?

A. I never inspected a car that was on the track that
360 I didn't know who it belonged to.

Q. Did you ever inspect one of our cars on the track before it was unloaded, when you knew it belonged to us?

A. I inspected a great many of them while it was being unloaded.

Q. Did you ever inspect it before they started to unload?

A. No, sir.

Q. You have had the opportunity, haven't you, during this period in some instances?

A. In some instances I might have had the opportunity.

Q. When you inspected during the process of unloading, where was your inspection made, there, or down at the office at the capitol?

A. I have inspected there, and inspected in my office.

Q. When the weather was suitable you would make the inspection there during the process of unloading, and

take gravity?

A. Yes, sir. 361

Q. In other instances you would take the samples away with you and made your inspection afterwards?

A. Yes, sir.

Q. You have testified, as I understand it, that this company received a so-called inspection slip such as have been described here and offered in evidence as plaintiff's Exhibits B and C, for every one of the cars that came into St. Paul and were unloaded here; is that true?

A. Yes, sir.

Q. I also understood you to testify in your direct examination that you were aware of the fact there were some instances in which cars were unloaded where you had never been able to get samples or have inspection of those cars, is that true?

A. I did inspect all the cars, saw the contents of the 362
car that was around there, it was practically all the same gasoline.

Q. I understood you to answer in response to a question by Mr. Stevenson, that there were some of the cars that came in here for defendant, you having never received any notice of the fact of their arrival, that you didn't get the opportunity to inspect in any manner; is that correct?

A. I think there is instances where it is correct.

Q. If you furnished inspection slips for each and every car that did arrive, how did you arrive at the gravity of the cars that are not on these slips that refer to cars with reference to which you made no inspection?

A. From the gravity of the gasoline in the tanks on the West Side.

Q. That is, you took the average? 363

A. Yes, sir.

Q. Do you know from your experience as an inspector, whether or not the Great Western Railroad was in the habit of marking these tank cars on the outside with the name of the party to whom they were consigned?

A. I think in some instances.

Q. After they were switched, and before the time when they were put on the unloading track?

A. I think they were marked in some instances.

Q. Wasn't that the general rule?

A. I wouldn't say it was the general rule; I didn't pay much atention as to the car numbers and gallonage and ascertain who the car was for and get a sample of it and test it.

Q. Don't you know as a matter of fact from your experience in the switch yards in St. Paul, that all gasoline

364 tank cars, after they come into the yards and are put on the side tracks, are marked by the railroad company in chalk showing the name of the consignee?

A. Not always, no.

Q. Would you say that was not the general rule?

A. I would not say it was not the general rule, no.

Q. If they had been, then you would know before you looked at the invoice, some of those tank cars there belonged to the Pure Oil Company?

A. I always knew when it belonged to the Pure Oil Company.

Q. You never made it a plan or a point to inspect the contents of any car of oil for this defendant, or of gasoline, before it was unloaded, or before they started?

A. While it was on the track?

Q. Yes, or before they started to unload it.

365 A. No.

Q. Although you could have done so in many instances if you had so chosen?

A. No.

Q. Do you mean to say you couldn't have done so?

A. I didn't know who the car belonged to; I only had the supposition it belonged to the Pure Oil Company by checking the yards; it might have belonged to the Chicago Great Western. I never thought I had any authority to get up on a tank car.

Q. Haven't you ever seen a car switched on our unloading track in a position to be unloaded, before any cars had been unloaded?

A. Yes, sir.

Q. You never made any effort to examine or take a sample before they started to unload?

366 A. I didn't know whether they belonged to you or not.

Q. Do I understand the situation of the yards that we didn't have a point at which our cars were placed ready for unloading on those tracks?

A. Yes, you had a place to unload them.

Q. When the car was placed in front of the pipe to unload, do you say you didn't know it belonged to us?

A. When it was placed, spotted, it was generally unloaded.

Q. Weren't there cases where it hadn't been touched or unloaded when you found it there?

A. I presumed it belonged to you; I presume I could have got up and tested it. I didn't know who it belonged to.

Q. Who did you ask for samples there?

A. There was sometimes one man there doing the

pumping, and sometimes two men.

Q. Did you ever call up our St. Paul office at the down-town office and ask for samples? 367

A. No, sir.

Q. Did you ever call up the down-town office during this period we are discussing from March, 1913, down to the end of March, 1915; did you ever call up over the 'phone, call up our St. Paul office and ask for the car numbers, the initials and gravities?

A. Yes, sir.

Q. What for?

A. I wanted to check them against the book I had in my possession.

Q. Check them against your own inspection records as to gravity?

A. Yes, sir; and the gallonage, because the gallonage varied; it might be an 8,000 tank came in, I would call up 368 to find out what gallonage it was, it might be down a foot and a half from the hood.

Q. Would you inquire as to the gravity?

A. Yes, sir.

Q. And that is your custom with every oil concern who has oil you inspected during that period?

A. No, sir; I got all the information from the stations.

Q. You mean at the pumping station?

A. Yes, sir.

Q. The only difference between our company and the other companies was at the place you got the information?

A. There was nobody over there who knew exactly what the gallonage was.

Q. I am asking about the gravity.

A. I knew what it was. 369

Q. Didn't you ever inquire from our down-town office what the gravity was?

A. Yes, sir.

Q. Why did you inquire?

A. I wanted to check it.

Q. Check their test with your test?

A. Yes, sir.

Q. As a matter of fact, most of the inspection you made of the products we received here in St. Paul, as far as gravity was concerned, was made from samples taken from the storage tanks, isn't that the fact?

A. Yes, and from cars on the track.

Q. That is, you were there in some instances when they were being unloaded?

A. Yes, sir.

370 Q. How often would that be, on an average, taking the entire product?

A. I would say once a month that cars would be unloaded and take samples from the cars.

RE-DIRECT EXAMINATION.

By Mr. Stevenson:

Q. Did you ever during any of this period, issue to the Pure Oil Company any certificate of inspection of a tank car of gasoline, without having inspected the contents or what purported to be the contents of that particular car?

A. Not that I know of.

By Mr. Chase:

Q. If you took a sample which you knew came out of the storage tank which not only had contained gasoline that came out of one car, but the gasoline that came out
371 of several cars, how could you answer that question in the manner you have just answered?

A. It was all the same gasoline.

Q. That was a supposition on your part?

A. Yes.

By Mr. Stevenson:

Q. Was it always the same gravity test when you found it in the cars or being unloaded from the cars?

A. Yes, pretty close to the same gravity.

Q. That is, for each respective storage tank?

A. Yes, sir.

Q. In inspecting gasoline, how much allowance is made in specific gravity between the reading of the hydrometer and the test you certified to?

A. We computed from the gravity and the temperature of the gasoline on the basis of 60.

372 Q. 60 temperature?

A. 60 degrees on the hydrometer.

Q. Is there any leeway allowed at all in the inspecting of gasoline as to its specific gravity, aside from the temperature? In other words, do you always certify—

A. Gasoline that runs pretty close to 60 inspection was always given at 60.

Q. How much below 60 would it need to be before you would call it something else?

A. 58 or 59.

Q. Then there would be a leeway of one-half degree, or less than 2 degrees?

A. Less than 1 degree.

By Mr. Chase:

Q. If it was 62 you would make it 60?

A. No, I always gave the Oil Companies the benefit of

it.

By Mr. Stevenson: 373

Q. That is the customary way?

A. Yes, sir.

By Mr. Chase:

Q. If it was below?

A. If it was 58 we would mark it naphtha.

HJALMER J. NILLSON,

sworn on behalf of plaintiff in rebuttal, testified:

By Mr. Stevenson:

Q. Where do you live?

A. Minneapolis.

Q. How long have you lived there?

A. Thirteen years and a half.

Q. What official position do you hold?

A. Deputy Oil Inspector of Hennepin county. 374

Q. How long have you held that position?

A. Since the 1st of March, 1909.

Q. You were appointed under Governor Johnson's administration, have been continuously holding that office ever since?

A. Yes, sir.

Q. Was the plant of the Pure Oil Company in Minneapolis within your district?

A. Yes, sir.

Q. I show you plaintiff's Exhibits B and C and I will ask you if that is the kind of gasoline inspection certificate issued by you in your jurisdiction, that is, do you use the same general form?

A. Yes, the same general form.

Q. During the period covered by this suit, from the 1st of February, 1913, to the latter part of April, 1915, when 375 the new inspection law went into effect, how frequently, if at all, did you visit the plant of the Pure Oil Company in Minneapolis?

A. Almost every day except when I was away; I was away in March, 1913.

Q. You may state if you went there whether you were notified of the arrival of oil or gasoline to inspect, or not.

A. Yes, sir.

Q. You made that on your regular rounds daily?

A. Yes, sir.

Q. In what direction did you ordinarily arrive or enter the plant of the Pure Oil Company, from what direction did you come?

A. I came from different directions.

Q. You know Mr. Danielson who works there?

376 A. Yes, sir.

Q. Did you see him every time you were there?

A. Yes, sir.

Q. It is claimed here on the part of the defendant that you issued kerosene oil and gasoline inspection certificates to them for cars of oil and gasoline during this period, the contents of which you didn't inspect; state what the fact is with reference to that?

A. It would happen sometimes that two cars would come from the same refinery, would be alike, I would take the gravity of both cars, but I assumed that the fire test should be the same; I would take the fire test of one, when referring to kerosene. I might come after a car has been unloaded and then if it had been 49 degree, I was very anxious to get a sample of that on account of it being varying in the fire test; for that reason I would sometimes
377 ask Mr. Danielson to give me a sample of their 49.

Q. That is, the contents of that car?

A. Yes, sir; once it happened a car of 49 had been unloaded and I told him how anxious I was to get it and he said there was nothing in the car and we took a sample from the pipe in the storage tank.

Q. How about the gasoline inspection?

A. The gasoline inspection took me very much less time than the kerosene, and it has been some cars that has slipped by without being inspected on account they had been unloaded before I came there.

Q. Were you asked to give them any certificate of inspection as to those cars?

A. No, sir.

Q. Did you give them any certificate of inspection on
378 any of them?

A. On some of them; yes, sir.

Q. About how many cars, during this period involved in this suit, of gasoline were there that they got unloaded before you got there, and for which you gave them an inspection certificate without having inspected the contents of the car, or what purported to be the contents of the car; how many during the whole period?

A. Sometimes it might be no car at all some weeks, and another week it might be two, I should say perhaps an average of three or four cars a month.

Q. Of gasoline?

A. Gasoline and kerosene too. A rough estimate, I can't remember those things just exactly now.

Q. State whether or not that is your best estimate.

A. That is my best estimate.

Q. And for those cars you gave inspection certificates?

A. Yes, sir.

Q. Did Mr. Danielson know you hadn't inspected the 379
contents of those cars?

A. I don't think so; I don't think Mr. Danielson knew what I inspected.

Q. Mr. Danielson has testified you examined the memorandum that he made daily of the cars that had arrived, which memorandum he kept in the warehouse; what is the fact with reference to that?

A. Up to the month of April, 1913, we always checked up at the end of the month, checked all the in-shipments. I checked up with one of the clerks for the Pure Oil Company for a long period and we would find during that period that some car has escaped my attention; I reported to the state oil inspector and we didn't write the certificates on such a car and didn't charge up for it, and at the end of the month of April, 1913, I reported about 380
certain naphtha cars to Mr. Eaton, the state oil inspector at that time, and reported what I thought with the appearance of all these naphtha cars which were not mentioned as due for inspection, should be inspected.

The Court: That is, the naphtha cars?

Witness: Yes, sir, and I reported to Mr. Eaton that several naphtha cars had come in and my previous instructions were that nothing under 60 needed to be charged up, no gasoline under 60 was charged up before or previous to that time. Then, assuming that those naphtha cars could be mixed in with a higher grade gasoline and brought to the 60, I reported to Mr. Eaton that they might tax for one car and sell three or four cars mixed with the good cars that were not taxed for.

Q. State whether or not you inspected naphtha. 381

A. I inspected naphtha if it came—whatever Mr. Eaton told me to inspect and charge it up and he told me there was no need of checking up with Mr. Reed, that was the man I checked up with, there is no need of checking up with him, afterwards there was so many shortage would have to be rechecked again.

Q. What method of checking did you use after that?

A. Then I checked up with Mr. Danielson and he told me to check up with the shipping clerk.

Q. Mr. Danielson has testified you have frequently asked him as to what was the result of his gravity test of gasoline and kerosene; what have you to say with reference to that?

A. Because I was told that they refused to pay for the cars.

Mr. Chase: We move to strike out the answer as not re-

382 sponsive.

Motion granted.

Q. Tell why you asked for the gravity test, if you did.

A. Because I wanted to compare with mine.

Q. For what purpose?

A. I saw them inspect some by raising the temperature or lowering the temperature, and I had the Baume scale, and it would be something I would have to be absolutely sure I could stand on my ground and show the gravity; I know they didn't always lower or raise the temperatrue when they went at it. The practice was of adding or deducting one degree gravity for ten degrees of temperature, and that would not come as near right as if the temperature is lowered or raised to 60.

Q. And in making your inspection did you put the temperature of the product at 60 before you put in your hy-

383 drometer?

A. No, sir.

Q. Why not?

A. I didn't need to do that; I had the Baume scale to go by.

Q. By which they equalize the temperature?

A. Yes, sir.

Q. Now, aside from those instances you have mentioned and the estimates you have given as to the frequency of the instances, were there any other times when you have made during all this period, a certificate of inspection of oil or gasoline for the Pure Oil Company when you didn't inspect as provided by the statute the contents of the car, or what purported to be the contents of the car?

A. I did not.

384 Q. Where and when did you make your official certificates of inspection?

A. Generally at my home.

Q. What did you do with them after you made them out?

A. Mailed them to the Pure Oil Company.

Q. Of what place?

A. 13th avenue south and First street, Minneapolis.

Q. Did you make any carbon duplicate of those certificates?

A. Yes, sir; I sent the original to the Pure Oil Company and the carbon duplicate to the state oil inspector.

Q. Did you have anything to do with the making out of monthly statements of fees due from the company?

A. No, sir; I made a monthly statement to the state oil inspector from my own records.

Q. Did you keep a regular register of the cars and

inspections you made?

385 A. Yes, sir; it is on the table there.

Q. During the period involved in this action did you have anything to do with the checking up of out-of-state shipments?

A. Once, I was there once three days checking up three or four months' out-shipments. A special check-up.

Q. It is in evidence here you didn't do any of the branding yourself of these receptacles.

A. No, sir.

Q. Did you have any talk with any one connected with the company about the doing of that branding?

A. No, I started—my instructions were to ask whether they were to continue the branding themselves or whether they wanted me to do it.

Q. Who did you ask?

386 A. Mr. Kelly of the Pure Oil Company, I asked all the companies in my territory.

Q. What did Mr. Kelly tell you?

A. He told me they had been branding it and they would do so in the future.

The Court: There is one explanation of the witness I didn't quite understand and that was with reference to this naphtha, as to whether or not that had been actually inspected during this period.

Q. It is in evidence in this case that there were some 23 cars of naphtha which you just mentioned a few minutes ago; state whether you actually inspected the contents of those cars of naphtha.

A. Yes, sir.

Q. When did those arrive?

A. During the month of May, 1913.

387 Q. They all came at one time?

A. No, sir; they came in bunches of three or four, up to seven; I think it was as high as seven in one day, one invoiced as gasoline and the other invoiced as naphtha.

Q. Did you make official certificates of the inspection of those cars?

A. Yes, sir; they were checked up at the end of the month of May and I struck them out of the record book; when Mr. Reed and I checked them up I understood they refused to pay then and I didn't know whether they were liable to pay for them.

Q. Who was Mr. Reed?

A. He was employed by the Pure Oil Company, I think he was the man that took care of the books of the out-shipments and I don't know but what he—I am not sure whether I can state that for a fact or not; I think he car-

388 ried the car-book of the in-shipments, too.

Q. What was the gravity of those cars of naphtha?

A. Fifty-seven.

Q. Were they all fifty-seven?

A. Very near.

Q. Did either Mr. John or L. B. Hancock ever tell you what they did with the naphtha?

A. No, sir.

Q. Do you know what they did with it of your own knowledge?

A. I do not.

The Court: What was your minimum gravity on what you term gasoline?

Witness: It has been 58.

Q. Fifty-eight is the minimum?

A. Yes, this was 57 and one of them was invoiced as
389 gasoline and they didn't refuse to pay inspection on that, but they refused to pay the inspection on those invoices as naptha because it was not mentioned in the inspecting law.

Q. How much of it was invoiced as gasoline of the 23 cars?

A. One car.

CROSS EXAMINATION.

By Mr. Chase:

Q. During the period from February 1st, 1913, down to April 25th, 1915, your minimum gravity for gasoline was 60, wasn't it?

A. Yes, sir.

Q. In order to save any misunderstanding, all my questions will be directed to the period between February 1st,
390 1913, and April 25th, 1915; that is what I will call the period.

A. The second, or first, question I got to refer to the record because I couldn't remember; they might have had some 59.

Q. I asked you when you were grading, in taking the gravity during that period, 60 gravity was your lowest gasoline gravity?

A. Yes, sir.

Q. Everything 60 and above, went in as gasoline, and was graded as gasoline?

A. As far as I remember.

Q. During this period the defendant in this case had cars coming in every day, more or less?

A. Yes.

Q. That was practically every day during the period, they had cars coming in there practically every day.

A. It might be two or three days they didn't.

Q. Take it as a general average, they would get in cars 391
three or four days in each week?

A. Yes, sir.

Q. Isn't it a fact that during that period you personally never took a sample of gasoline out of any tank car switched in there for this defendant company before it was unloaded?

A. That is not a fact.

Q. Did you ever go out there and take a sample out of the tank car before it was unloaded?

A. Yes, sir.

Q. Before they started to unload it?

A. Yes, sir; and while they were unloading.

Q. In how many instances?

A. In most instances, the majority of instances.

Q. What did you do with that sample? 392

A. Tried them.

Q. How large a sample did you take?

A. I don't remember.

Q. You mean to sit there and say that in most instances from the first day of February, 1913, down to the 25th day of April, 1915, that you went out on the trackage of the Chicago Great Western Company and took samples out of those tank cars consigned to this defendant before they started to unload those cars?

A. I can't swear to that from the 1st of February, but from the 1st of May, 1913.

Q. From the 1st of May, 1913, that was the case?

A. Yes, sir.

Q. Before they started to unload into the storage tanks?

A. Yes, sir; and while they were unloading, at times. 393

Q. But in most instances before they started to unload?

A. Yes, sir.

Q. Or draw off any of the contents of that tank car into the storage tank?

A. Yes, sir.

Q. Isn't it a fact that in almost every instance, every time you came down there to the plant of this defendant during that period, that you didn't take a single sample of gasoline and put it into any kind of a receptacle that you brought with you or that you got from them, and take it away and test it?

A. I took it from the cars, yes, but I didn't carry any gasoline with me.

Q. Where did you make your test as to the gravity of the gasoline?

394 A. Out on the car.

Q. How did you get your temperature?

A. By the Baume scale.

Q. They get tank cars of gasoline in the winter just the same as in the summer?

A. Yes, sir.

Q. Do you mean to state you went out there practically every day through the winter of 1913-14 and the winter of 1914-15 and took your gravity test of that gasoline out there in the open, in the cold, right out where the car was?

A. In most instances.

Q. What temperature would you take that test at?

A. At 20.

Q. Suppose the temperature outside happened to be 40 or 50, how did you reduce it to 20?

395 A. It was not 40 or 50.

Q. Do you mean to say there were no times during the fall, winter or spring of these years that the outside temperature might not have been 40 or 50 degrees above?

A. Yes.

Q. How did you get your temperature of 20 above at that time; did you always take it at this temperature of 20 above?

A. No, I took it at the temperature it was.

Q. And I understand you can take a given temperature, atmospheric temperature, Fahrenheit temperature, and there is a scale you can graduate by taking into consideration what the temperature was at the time you took the test, you can figure approximately what the gravity is?

A. Yes, sir, at 60.

396 Q. In every instance the temperature at which you took this gravity, this was the atmospheric temperature outside of the tank car at the time you took the test?

A. Yes, sir.

Q. How low on the hydrometer you use does your thermometer go?

A. 20.

Q. Do you mean to tell me there were any times during the winter of 1913-14 or 1914-15 that the temperature outside did not drop below 20 above zero?

A. Yes, sir.

Q. What did you do when you were out there at the car?

A. The temperature in the tank car was always higher than it was outside.

Q. You said you went entirely by the temperature outside, the atmospheric temperature?

A. Yes, sir.

Q. Suppose it was to zero, what would you do in that 397
instance, how would you take the gravity?

A. If it was down to zero?

Q. Yes, or below, your thermometer don't register any lower than that?

A. No, but that is very easy with nine years' experience, to find out how much you could let off for that.

Q. That would be a matter of guess-work?

A. Perhaps it would be a matter of guess-work, yes.

Q. Where did you take your fire tests?

A. At home or at some other point.

Q. Now, during what time of day did you generally make those inspections out in the yards?

A. That is different times; that depends upon when it is convenient to me to come in that direction, sometime it has been early in the morning but mostly around noon. 398

Q. In a number of instances these cars when you went out there and took out the samples, were over on what we call the switch tracks of the railroad company?

A. They were on the same track where they were being unloaded from.

Q. Was that true in all instances, did you never get any samples out of any cars except cars that happened to be standing on the unloading tracks?

A. No, not on any other track.

Q. You took those samples out of the cars generally before you came into the plant or the warehouse room where Mr. Danielson was?

A. Generally.

Q. Generally when you first walked in there each day before you had seen him or talked with him, you had gone 399
out and taken the sample?

A. Yes, sir.

Q. Had it with you in your pocket?

A. No, I had the kerosene samples when I could get them, but I didn't take the gasoline samples with me from anywhere; I didn't carry gasoline with me.

Q. Describe how you opened those cars.

A. Unscrewed the top cap.

Q. Is that operation easy?

A. Yes, sir.

Q. Any man of ordinary strength can unscrew the top?

A. Yes, sir.

Q. You don't mean to state that in every instance, as far as kerosene was concerned, that you took a sample out of the car before it was unloaded?

A. I didn't say in every instance.

400 Q. In how many instances do you suppose you took your samples of kerosene out of the car before it was unloaded?

A. I couldn't remember how many.

Q. In the majority of instances did you take the samples of kerosene out of the kerosene tank cars before they were unloaded?

A. Yes, sir.

Q. And that would be before you would come into the place of business to see Carl?

A. Yes, sir.

Q. You had those samples with you?

A. Yes, sir.

Q. Isn't it a fact that every time you went down there you asked Carl for the car numbers and initials?

A. Yes, sir.

401 Q. Isn't it also a fact you asked him for his gravity test?

A. Yes, sir.

Q. Why did you do that?

A. To check up, as I explained before, in order to find out whether his gravity and mine were alike or not; I have seen them bring the gasoline in the winter time up to 60 temperature and I have seen Mr. Hancock and Mr. Danielson do that and I told him and L. B. Hancock about the Baume scale I got.

Q. Don't you know, as a matter of fact, that the reason you asked Danielson every day for those gravity tests of that gasoline was because you had never taken a gravity test, either from a sample taken by you out of any car of gasoline that was consigned there to this defendant during this period, or from any other sample of gasoline, whether 402 it was in the car or not?

A. No, sir.

Q. You want to swear to that?

A. I will swear to it.

Q. How did you get your sample out of the tank car, after you unscrewed the top?

A. I always carried a little bottle with me and I got it in that; I never went out without the hydrometer and a couple of bottles in my pocket. I mean for the oil purpose; I have it with me now, I can show you.

Q. How did you get your sample out; did you simply dip the bottle in?

A. No, I had a bottle where there is a thread on the top of it and have a square cap with a wire fastened on that is about 8 or 9 feet long; I get down on the car and put it on it; I have to have it because you come when the

car was nearly empty, you need the long wire.

403 Q. In most cases you took the sample out before they started to unload it?

A. Yes, sir.

Q. That was true also as to kerosene oil?

A. Yes, sir.

Q. What would you say as to the habit or custom of the railroad company to mark the tank cars after they were switched into the yards, with the name of the party to whom they were consigned; didn't most of the tank cars have the name marked on?

A I would say that the Pure Oil Company was marked either on the tank or on the beam below the tank.

Q. So when you went through the yards, whether the cars were on the two unloading tracks or switch tracks, you could tell which cars were consigned to us by the marks on them?

404 A. Yes; there were some cars then I had to inspect among those, I always asked the car initial, what kind of cars, how many cars he had when he telephoned me and I was prepared to inspect so many cars.

Q. You didn't inspect any others?

A. No, sir.

Q. This inspection you gave and the taking of the gravity of the gasoline was practically all the time done before you would come into the office or warehouse of this defendant?

A. Practically all the time.

Q. And the only reason you ever asked Carl for the gravity of each of those cars was to see how near it conformed to the test you say you took each time?

A. Yes, sir.

405 Q. How many samples of kerosene oil during that period do you think you ever took away with you to take a fire test of?

A. I should say on an average five or six a week.

Q. During that time?

A. Yes, sir.

Q. When you were out there at these various times taking samples out of the cars, were any of the employes of the Pure Oil Company out there with you?

A. No, sir.

Q. Never happened to see one of them out there?

A. I happened to see them on the platform or around the yard.

Q. They never happened to be out there near the switching or unloading tracks when you were there?

A. Mr. Danielson might have seen it.

406 Q. He saw you taking these samples out of the tank cars?

A. Yes, I should think he would see it when he was in the neighborhood.

Q. I am speaking now of the period for two years before April, 1915.

A. Yes, sir.

Q. You stated, I think, in answer to Mr. Stevenson's question, there might have been some instances where you were not able to get samples out of the tank cars before they commenced to unload them; they would be very few instances, there were not many instances of that kind?

A. Yes, sir; there were many.

Q. I thought you just testified in most of your instances you got your samples out before they started to unload.

407 A. While they were being unloaded and before they started to unload.

Q. Were there some instances where you didn't get any samples until after they finished unloading?

A. Yes, sir.

Q. Where would you get them from?

A. Sometimes I got them from Mr. Danielson and sometimes I couldn't get them because they were all unloaded, he used to keep them and I would come sometimes and while he was testing it I would get it from his test while he was testing.

Q. Lots of this was tested long before the unloading?

A. Yes.

Q. Then you would have had your test at that time, wouldn't you?

408 A. I was sure about my test.

Q. If you were sure about your test why did you care about his test?

A. I am only talking about when I didn't get the sample; if I got this sample I didn't go by his test. In those cases where I didn't get the sample, that is what I reserved, the three or four cars a month I missed.

Q. Three or four cars would be all you would miss?

A. I should think so, that would be fair.

Q. Perhaps three or four cars a month or perhaps six or seven cars a month to make a liberal allowance, would be all you missed taking a sample of either before they started to unload or while they were unloading, during this period?

A. Yes, sir.

Q. You say you only took the inspection out there of the cars that were reported by Mr. Kelly every day to you;

did you manage to keep up with your inspection as far as cars were reported? For instance, if he would report to- 409
day seven cars of this kerosene, did you manage to keep pace with the arrival of the cars?

A. As near as I could; I couldn't come on the instant.

Q. You said that sometimes you would see a lot of other cars out there marked for the Pure Oil Company that had arrived on some of those switch tracks, that you didn't inspect them because you hadn't received that particular number from Mr. Kelly.

A. I didn't receive any numbers from Mr. Kelly only the number of the cars, so many gasoline and so many kerosene.

Q. That is all you would inspect, you would inspect so many cars, just the number of cars that he gave you?

A. No, I wanted to know how many cars they had got in that day, but it might be some left over from the other 410
day.

Q. That you hadn't had time to inspect?

A. Yes, sir.

Q. Or that you hadn't inspected?

A. Yes, sir.

Q. Then you inspected all of those this next day?

A. Yes, sir; I want to say if I was called to inspect three cars one day, I might have inspected five; that is what I want understood.

Q. When you got through inspecting, taking your sample out of the car, you screwed the cap back again?

A. Yes, sir.

Q. Did you ever say anything to Mr. Danielson about the specific gravity you had found or obtained from inspecting certain cars; did you ever mention to him in any 411
way the fact you had thus made inspection of those cars, at the time you came in the office and talked with him?

A. I told him his gravity was different from mine.

Q. At times it did differ?

A. Yes, sir.

Q. Do you know whether or not there was a period from February, 1913, to April 25th, 1915, there was another deputy inspector working with you in Hennepin county?

A. Yes, sir.

Q. Who was it?

A. During the latter part of the period I think it was Mr. Allen; I don't know whether he was during all that period or not; Mr. Norton was before Mr. Allen.

Q. During this period there were two deputy inspectors working in Hennepin county?

A. Yes, sir; we had different districts; different com-

412 panies.

Q. Did you use anything except your hands in opening these tank cars to make the inspections, did you use the bar which sometimes is a piece of pipe?

A. That is on the corner, would be standing right on the corner of the pump-house, but it is very seldom that was necessary.

Q. Sometimes you had to come down to the pump-house and get that piece of pipe?

A. Yes, sir.

Q. You say it was very seldom you had to use that?

A. Yes, sir; evidently the cars had been opened before; I never brought any with me.

Q You found the seals broken?

A. Yes, sir; and sometimes no trace of the seals.

413 RE-DIRECT EXAMINATION.

By Mr. Stevenson:

Q. Mr. Chase in his question a few moments ago in talking about the four or five cars you say you missed each month, mentioned six or seven cars also as being the number you missed; what is your testimony as to the number of cars you missed on the average during this period?

A. It would be very hard for me to guess at it after this long time, I think three or four a month would be a fair allowance.

Q. Would five cars be as much as you missed?

A. Yes, five cars would be as much as I missed.

Q. Let me understand which tracks these cars were on when you opened them and inspected the contents.

A. On the track they would be unloaded from.

414 A. J. RUSH,

sworn on behalf of plaintiff in rebuttal, testified:

By Mr. Stevenson:

Q. You are the present chief state oil inspector of the state of Minnesota?

A. Yes, sir.

Q. When did you take that office?

A. The 22nd of March, 1915.

Mr. Stevenson: It is stipulated that the exhibits attached to the complaint, truly show the place where the gasoline or oil was received by the defendant in the tank cars.

Q. I show you Exhibits 1 to 24 attached to the plaintiff's complaint; I will ask you where those exhibits were prepared, that is were they prepared in your office?

Objected to as immaterial, no question being made to the accuracy so far as they are concerned, as to quantity, etc., but as amended and modified by our stipulation. 415

Mr. Stevenson: The purpose is to show that the information contained here was obtained from the duplicate inspection certificates.

Objection overruled.

A. They were prepared in my office in the State Capitol, St. Paul.

Q. Where was all the information shown on these exhibits obtained?

Objected to as immaterial.

Objection overruled. Exception by defendant.

A. They were obtained from the duplicate certificate mailed to us by the deputy inspectors.

Q. Where is your office?

A. Room 315, State Capitol building. 416

Q. All of this inspection and controversy took place practically prior to your coming into office?

A. Yes, sir.

Mr. Chase: We object to so much of that question as relates to inspection.

Objection overruled.

Plaintiff rests.

CARL V. DANIELSON,

re-called by defendant in surrebuttal, testified:

By Mr. Chase:

Q. During this period we have been talking about in this trial, from February, 1913, to April 25th, 1915, who, if anyone, besides yourself, attended to the opening of these tank cars, taking off the cover I mean, for the purpose of unloading? 417

A. Mr. John Hancock.

Q. Anybody else besides you and Mr. Hancock that you know of?

A. No, sir.

Q. I will ask you whether or not at the time, so far as the cars you opened and took the caps off of, whether the seals were broken or unbroken on that car at the time you opened them?

A. No, they were all sealed except there was some of those high grade gas the covers was put on with some kind of glue and you couldn't get the covers off; we had to work 15 or 25 minutes or up to half an hour to get those off.

Q. Did you ever attempt to take a gravity test of the

418 gasoline out there where the cars were?

A. Sometimes.

Q. Are you able to state on the average how long it would take to take the gravity test, including the time of climbing up on top of the car, removing the cap and take your sample out and put the cap back?

A. Not shorter than 10 to 15 minutes.

Q. During this period did you ever see Mr. Nillson out there in the yard taking any samples out of any cars?

A. No, sir.

Q. Did your duties call for you being in a position there, a physical position on the plant where you could have seen him if he had been out there, most of the time?

A. Yes, I could.

Q. How often were you out there in the yard during the forenoon and afternoon?

419 A. Every half hour or every 15 minutes, because I had to go out in the pump-house and every so often a tank wagon would come in to be filled, etc.; I was out there mostly every 10 minutes.

Q. During this period did Mr. Nillson ever state to you that your gravity test didn't agree with his?

A. No, he did not.

Q. Did he ever inform you during that period at any time or any day that he himself had taken a gravity test of any of this gasoline?

A. No, sir.

Q. As a general proposition are you able to state which way he came into the room in which you were operating; as I understand it, the room in which you operate, one end of that room opens out on the trackage to the pump-house; 420 the other end of the room goes upstairs into the office?

A. Yes, sir.

Q. Which way, as a general proposition, did he come into your room?

A. Most of the time he came in, he came in from 13th avenue and First street from our gates.

Q. That is between your place and the pump-house?

A. Yes, in the yard.

Q. Would you be in a position during this period the majority of the time to see from which way Nillson came when he came to your plant?

A. Yes, sir.

Q. And which way did he come?

A. He came in from our gate.

Q. Would he naturally come in that way if he had come direct from the unloading tracks?

A. No.

Q. Now, how long would he be there with you?
A. About from five to ten minutes. 421
Q. Did you see where he went generally when he went away?
A. Yes, sir.
Q. Which way did he go?
A. He went up through the warehouse up to the office.
Q. Did he come back, as a general proposition, ever come back after he made that one visit each day?
A. No, sir.
Q. Did you ever see him go out in the yards where the unloading or switch tracks were?
A. Yes, I saw him sometimes.
Q. How many times during that period?
A. Not very many.
Q. Did you notice what he did when he went out there?
A. No, sir. 422
Q. Did you see him do anything out there by way of taking samples out of any cars?
A. No, sir.
Q. Did you ever see him take any samples out of cars of gasoline or kerosene while you were pumping it out into the storage tank?
A. No, sir.

CROSS EXAMINATION.

By Mr. Stevenson:
Q. When you are in the pump-house you can't see the unloading tracks, can you?
A. No, not in the pump-house.
Q. There is no window in that side?
A. Yes, upstairs; not downstairs.
Q. When you are filling tank wagons you mean you can 423 see the unloading tracks?
A. Yes, I have a window on the wall.
Q. When you are filling tank wagons you are not standing and looking out the window?
A. Yes, sir.
Q. Filling the tank wagon at the same time?
A. Yes, sir.
Q. You say Nillson never told you he had a different gravity on any of the cars, than what you had?
A. No, except when we were looking over the samples I put in there.
Q. Did he sometimes use some of this same gasoline or kerosene to make this test that you would use to make your test in the warehouse?
A. I can't exactly remember; may be he did sometimes,

may be he took a sample and tested it.

424 Q. Didn't he take some of the same kerosene and gasoline you were testing and put his own hydrometer into it?

A. Yes, he had a little one with him.

Q. You have seen him put it into the oil and gasoline in your warehouse?

A. Yes, sir.

Q. What did you mean when you said you never saw him make an inspection or a test?

A. Not from the tanks, I said.

Q. He did make them from the samples you were using?

A. Yes, I said that.

Q. Do you mean to say you know Mr. Nillson didn't make inspections of the oil and gasoline, or tests?

A. You mean take it by himself?

Q. You heard his testimony here on the stand?

425 A. Yes, sir.

Q. Do you mean to contradict what he said, do you mean to say he didn't make the inspections he has testified he did make?

A. He did not.

Q. How do you know that he didn't?

A. Because I know, because most of the cars were sealed and the seals were never broken.

Q. Couldn't he get up there after you had taken the cap off, and screw it on a little, as you testified?

A. I never saw him climb up on the tank.

Q. You knew this was going on this way all the time?

A. Yes, sir.

Q. During all this period?

A. Yes, sir.

426 Q. You knew he was not making the inspections?

A. Yes, sir.

Q. And Mr. John Hancock knew it?

A. Yes, sir.

Q. You and he talked about it?

A. Yes, sir.

Q. When?

Objected to as not proper cross examination and immaterial.

Objection overruled. Exception by defendant.

Q. You and Hancock talked about it during this period?

A. We didn't talk much about it; he asked me once if Nillson took the gravity himself and I said no, not what I know of he didn't.

Q. When was that?

Same objection.

Same ruling. Exception by defendant.

427 A. I can't exactly remember.

Q. A couple of years ago?

A. May be longer than that.

Q. Since you got your naphtha in, wasn't it?

A. Not what I remember; no, I don't think it was; I think it was before that time.

RE-DIRECT EXAMINATION.

By Mr. Chase:

Q. In how many instances did he take the test out of your samples, was it frequently?

A. No, sir.

Q. How many times would you say he ever took a test out of your samples?

A. For the last two or three months?

428 Q. I am talking about the time between February, 1913, and down to April, 1915, how many times during that period did he ever take the test out of your samples?

A. I couldn't say.

Q. A dozen times?

A. No, sir.

Q. Do you have to remain in the pump-house all the time while you are unloading a tank car into the storage tank?

A. No, sir. Just have to go there once in a while and look if the pump works all right, may be the tank gets empty, etc.?

JOHN HANCOCK,

re-called by defendant in surrebuttal, testified:

By Mr. Chase:

429 Q. During the period in controversy in this suit, were you around the switch yards we have been discussing here in this case, more or less every day?

A. I was.

Q. And at different times of the day?

A. Yes, sir.

Q. Did you ever see this Deputy Inspector Nillson opening any tank cars consigned to your company?

A. I never saw Mr. Nillson opening a tank car belonging to our company at any time during the period of this suit.

Q. Did you ever see him out there in the yards where either the switch tracks or unloading tracks were, during this time?

A. I never saw Mr. Nillson in the switch yards or at the unloading tracks at any time.

Q. Did you see Mr. Nillson at times when he came

430 down to the plant?

A. Yes, sir.

Q. Did you see him before he arrived at the plant?

A. Yes, sir.

Q. What direction did he come from?

A. He came down 13th avenue and walked into our yard and into the warehouse.

Q. In coming down 13th avenue, he wouldn't come over the trackage, the switches?

A. No, he would come direct from the Washington avenue street car line.

Q. Are you able to state approximately how long he remained down there at the plant these days he came down?

A. He would remain a period of five or ten minutes.

Q. Did you ever during this period, yourself personal-
431 ly open up any of those cars before they were unloaded?

A. A great many times.

Q. Did you ever find the seals broken?

A. No; we would break them ourselves and take a bar and open the cars.

Q. During your experience how often was it necessary to use the bar in opening the cars?

A. In all instances; I hardly recall a car that would be opened without a bar.

Q. Could you use a piece of gas pipe?

A. The term "bar" or "pipe" would be considered the same. We would call that a bar.

Q. Did you ever hear Nillson ask Danielson, or state to Danielson, that Danielson's gravity test didn't agree with Nillson's?

432 A. I did not.

Q. Did you ever see Nillson take a sample of either oil or gasoline out of one of those tank cars during the process of unloading from the tank car into the storage tank, during this period?

A. No, sir; and Mr. Nillson was never out there to my knowledge.

Q. Were you around there pretty generally during the greater part of each day?

A. I was around in the yard and in position to know during the period of this suit; I devoted my entire time to the operating end.

FRANK P. KELLY,

re-called by defendant in surrebuttal, testified:

By Mr. Chase:

Q. Mr. Nillson stated here, when he first went on to the

work of inspection down there at the plant, that he asked you whether you wanted to continue doing your own branding, or have the inspector do the branding; was there ever any such question asked you by him? 433

A. No, sir.

Q. Did you ever state to Mr. Nillson or any other deputy oil inspector that you preferred to do your own branding?

A. No, sir; I did not.

Q. Is it possible—is the location and situation of the pump house with reference to the room in which Mr. Danielson works, so that the switch tracks and unloading tracks there can be seen from this shipping-room Mr. Danielson works in?

A. Yes, sir.

Defendant rests.

Mr. Chase: Of course it is understood that the defendant reserves the right in the record to interpose any objection as to materiality or relevancy to any one of the facts in the stipulation. 434

The Court: It is always open to counsel to claim a stipulated fact does not prove the issue.

Testimony closed.

The Court: I don't see anything in this case to substantially differentiate from the recent case of the State against the Bartles Oil Company. I think there has been an inspection of practically all of this oil to comply with the state requirements, and in any event the defendant, by its actions, has estopped itself to deny that there was inspection. The only question I have any serious doubt about is the question of the naphtha. I think it is entirely clear that a portion of the naphtha not used as gasoline, the state cannot recover for. It shows there was an actual inspection of this naphtha by the State Department, and it further appears that the two thousand and some barrels stated in the stipulation actually was used in a blend with a higher grade gasoline, and put out under the state brand as gasoline, and I think judgment should be ordered for the state for that portion of it, as well as the other conceded quantities in the stipulation, excluding, however, the portion of the naphtha that has not been shown to be used as gasoline. Plaintiff may prepare findings and judgment, and judgment may be entered for the plaintiff. 435

Forty days stay of proceedings granted by agreement of parties.

436 PLAINTIFF'S EXHIBIT A.

State of Minnesota — District Court
County of Ramsey — Second Judicial District

State of Minnesota,
vs. Plaintiff,
Pure Oil Company, a corporation,
Defendant.

Agreed Statement of Facts.

For the purpose of the trial of the above entitled action it is hereby stipulated and agreed by and between the respective parties thereto that, subject to objection as to relevancy and materiality, the following facts may stand as admitted; that either party may introduce evidence in the
437 regular manner, upon the trial of this cause, relative to any matters properly within the issues covered by the pleadings, and not controverting the facts herein stipulated. Subject to such understanding, it is agreed as follows:

1. That during all of the times covered and embraced herein, the above named defendant is and has been a South Dakota corporation, duly licensed to transact its corporate business within the State of Minnesota as a foreign corporation, under the provisions of Sections 6206 and 6207, Gen. Stat. Minnesota, 1913, and having its principal place of business at Groton, South Dakota; its principal places of business in the State of Minnesota being in the cities of Minneapolis and St. Paul in said State.

438 2. That since the beginning of the present system of having the fees of the oil inspection department turned into the State Treasury, the State has received as such fees during the said years and up to the time that the last of the fees accrued which are involved in this action, the following amounts:

Year Ending July, 31,	Receipts
1903	$14,626.10
1904	30,334.05
1905	28,597.35
1906	30,242.70
1907	32,208.05
1908	43,864.15
1909	34,934.40
1910	50,667.67
1911	56,852.84

1912	63,354.35
1913	72,656.38
1914	81,565.90
July 31, 1914, to April 30, 1915	62,689,20

439

3. That during the period from July 31, 1912, to April 30, 1915,—in adition to the foregoing cash payments,—fees for inspection under said law were charged, but are not as yet collected, against various persons, co-partnerships and corporations engaged in the oil business within said State, to the aggregate amount of $15,000.00; which amount includes the amount sought to be recovered in this action as well as amounts involved in two other actions now pending between plaintiff herein and other of said oil companies. That the several charges going to make up said sum of $15,000.0 are all against going concerns that, at the time the charge was made, were solvent and still are solvent.

440

4. That the actual expenses of the State, made by the Chief Oil Inspector from the specific appropriation that was made annually by the Legislature for the use of the Oil Inspection Department alone, in the conduct of the business of that Department, for the years mentioned in Paragraph 2 herein, have been as follows:

Year Ending July 31.	Expenses
1903	$13,657.37
1904	29,691.59
1905	27,956.90
1906	27,152.42
1907	29,140.35
1908	29,999.08
1909	30,288.05
1910	40,044.24
1911	40,494.08
1912	39,999.76
1913	47,117.62
1914	52,467.56
July 31, 1914, to April 30, 1915,	46,863.55

441

5. That the various amounts collected and amounts charged but not collected, for inspection under said Act, and the various amounts disbursed through the medium of the Oil Inspection Department in the conduct, execution and enforcement of said Act, have at all times been matters of public record in the office of the auditor of said State, and that the annual amounts of such fees actually received, and the various annual amounts disbursed through the

442 medium of the Oil Inspection Department, as aforesaid, have been set forth and published in the printed Biennial Reports of the Auditor of said State.

6. That at all times covered and embraced by this action, defendant has been assessed, under the general tax laws of the State of Minnesota relating to personal property, upon all and several the illuminating oils and gasoline subject to the provisions of said Inspection Law, and owned and possessed by defendant within said State on and as of the first day of May in each year, and has at all times duly paid said taxes so levied and assessed.

7. That upon the trial of this action, if either party offers in evidence compilations of figures, computations, or financial statements, prepared by an accredited official or employe of the departments of the State Auditor, or
443 State Treasurer, from the books and records of said respective departments, that neither party shall object to the same as being incompetent, hearsay or not the best evidence, and that such compilations, statements and computations shall be treated in all respects as if the original entries and records from which they were compiled were produced in court and offered in evidence. This arrangement shall also apply to oral testimony of said officials or employes relating to such matters in connection with the books and records of their respective departments.

8. It is claimed herein by the plaintiff that certain quantities of oil and gasoline, belonging to the defendant, were inspected and branded, as set forth in Paragraph II of the complaint herein. The defendant denies that such oil and gasoline were actually inspected as pro-
444 vided by law, or at all, but that the state furnished to the defendant official certificates showing the inspection of such oil, and the result thereof as required by law. The fact as to whether such commodities were actually inspected or branded is left for determination at the trial of this cause.

It is agreed, however, that the quantities of gasoline and oil which the defendant received in tank cars in the State of Minnesota during the period set forth in the complaint herein, and for which the state furnished to the defendant certificates of inspection, which certificates the defendant accepted and retained, were as follows:

Gasoline	99,022 Bbls.
Oils	16,304 Bbls.
Total	115,326 Bbls

It is further agreed that the out-of-state shipments that were made by the defendant from the above quantities of 445
gasoline and oil, which shipments were reported to the Oil Inspection Department by the defendant prior to the commencement of this action and upon which quantities the State rebated the inspection fees, were as follows:

Out state shipments of gasoline,	7,235 Bbls.
Out state shipments of Oil,	3,601 Bbls.
Total out state shipments,	10,836 Bbls.

It is further agreed that since the commencement of this action the defendant has reported to the Oil Inspection Department that further out-of-state shipments of said oil and gasoline had been made, the inspection fees of which additional out shipments may be deducted from the claim of the plaintiff herein, namely:

Additional out-of-state shipments of gasoline,	6,670 Bbls. 446
Additional out-of-state shipments of Oil,	2,689 Bbls.
Total	9,359 Bbls.

It is further agreed that the quantities of oil and gasoline belonging to the defendant, which the state claims to have inspected, were determined by the State in each instance by using the quantity specified on the invoice of the shipper, then in the hands of the defendant. The defendant now claims that the quantities of oil and gasoline actually received by it on said invoices, when measured as it was pumped from the tank cars into the stationary tanks of the defendant, was frequently considerably less than the quantity stated on the bill, or invoice, and that the defendant, in settling with the shipper for said oil or gasoline, paid the shipper for the actual gallonage con- 447
tained in the tank at the time of unloading and that the oil and gasoline so actually received by the defendants, during said period, and so claimed to be inspected by the State, was actually 700 barrels of gasoline less than the quantity specified on the invoices, and was 100 barrels of oil less than the quantity specified on the invoices.

The State is willing to accept this claim of the defendant and concedes that the quantities of gasoline and oil so claimed to be inspected may be reduced accordingly. The following is a tabulated summary of the foregoing statements and figures:

	Gasoline	Oil	Totals
Bbls. inspected,	99,022	16,304	115,326
Less out-of-state shipments,	7,235	3,601	10,836
	91,787	12,703	104,490

448 Subsequently reported out-of-state shipments,	6,670	2,689	9,359
	85,117	10,014	95,131
Shortage of quantities below invoices,	700	100	800
	84,417	9,914	94,331
Fees at 10c per bbl.	$8,441.70	$991.40	$9,433.10

It is further stipulated that of the commodity above mentioned as "gasoline", 4,829 barrels thereof was billed to the defendant by the refineries as "Naptha".

For the purposes of this action, it is conceded that 2415 barrels of said commodity billed to the defendant as Naphtha was mixed by the defendant with high test gasoline of about 74-76 gravity and sold by the defendant in the State 449 of Minnesota as and for gasoline, in the regular channels of trade. That said Naphtha had a specific gravity test of not less than 57 degrees.

9. That all of the oils and gasoline mentioned herein were shipped to and received by the defendant in the State of Minnesota in tank cars containing more than 50 barrels each. Defendant admits that drafts were drawn upon it by the State Auditor at the times and for the amounts specified in paragraph III of plaintiff's complaint herein, and that no part of the fees involved in this action has ever been paid.

That during all of the times set forth in the complaint herein, the defendant has continued to notify the Chief State Inspector of Oils, or one of the duly qualified and acting deputies, of the arrival of each and all of said tank 450 cars, giving the number and date of arrival thereof, and has received and used certain official certificates supplied to it by plaintiff through its Oil Inspection department, and has sold its oil and gasoline within the State of Minnesota under the branding and gravity indicated by said certificates.

10. That upon the trial of this cause either party may offer in evidence printed biennial reports of the State Auditor and the printed reports of the Chief Oil Inspector without identification with the same force and effect as if the originals of said records of the State Auditor and the original reports of said Chief Oil Inspector were produced in court and so offered. All other objections to such reports, or any parts thereof as evidence, are hereby expressly reserved by both parties. Any parts of said reports,

if any so admitted in evidence by the court, may then be read into the record. 451

Dated at Minneapolis, Minnesota, January 31st, 1916.

Lyndon A. Smith,
Attorney General,
William J. Stevenson,
Assistant Attorney General
Attorneys for Plaintiff.
Nathan H. Chase
Attorney for Defendant,
607-9 First Nat.-Soo Bldg.,
Minneapolis, Minnesota.

PLAINTIFF'S EXHIBIT B.

B665

State of Minnesota 452
Department of 4095
Oil Inspection
Guy A. Eaton
State Inspector

Aug 3rd 1914

I do hereby certify, That I have this day Inspected for Pure Oil Co G. A. T. X Tank Car No. 2304 containing 8212 Gals. brand of Gasoline in (Tank) bbls. and that its Gravity is 61 degrees, and have approved it, as required by Sec. 3621 to 3628 General Statutes of 1913 as amended by Chap. 271, Laws of 1915 relating to the Inspection of Petroleum products.

E. H. Payte
Deputy Inspector.

This Certificate to be given to party for whom inspection is made. Duplicate to St. Paul Office. 453

PLAINTIFF'S EXHIBIT C.

B669

State of Minnesota
Department of 4096
Oil Inspection
Guy A. Eaton
State Inspector

Aug 6th 1914

I do hereby certify, That I have this day Inspected for Pure Oil Co. T. C. X Tank Car No. 2674 containing 8256 Gals. brand of Gasoline in (Tank) bbls. and that its Gravity is 62 degrees, and have approved it, as required by Sec. 3621 to 3628 General Statutes of 1913 as amended by

454 Chap. 271, Laws of 1915 relating to the Inspection of Petroleum products.

E. H. Payte,
Deputy Inspector.

This Certificate to be given to party for whom inspection is made. Duplicate to St. Paul Office.

STATE OF MINNESOTA, County of Ramsey. DISTRICT COURT, Second Judicial District.

STATE OF MINNESOTA, Plaintiff,
vs.
PURE OIL COMPANY, a corporation, Defendant.

455

CERTIFICATE.

I hereby certify that the foregoing case, consisting of 161 pages of typewritten matter, and together with plaintiff's Exhibits A, B and C thereto annexed, has been examined by me and found conformable to the truth and to contain all the evidence offered or introduced on the trial of this cause, and all objections, rulings, orders and other procedings of such trial, and I hereby settle and allow the same as the settled case herein.

Dated March 25th, 1916.

JAMES C. MICHAEL,
District Judge.

Endorsed: Filed March 25, 1916. N. C. Robinson, Clerk. By G. A. Johnson, Deputy.

456

STATE OF MINNESOTA, County of Ramsey. DISTRICT COURT, Second Judicial District.

STATE OF MINNESOTA, Plaintiff,
vs.
PURE OIL COMPANY, a corporation, Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

The above entitled matter duly came on for hearing in the above named court before the undersigned judge for trial without a jury on February 3, 1916, and was heard on that day and on the two succeeding days. Lyndon A. Smith, attorney general, and William J. Stevenson, as-

sistant attorney general, appeared on behalf of the state, and Nathan H. Chase, and George E. Dyer appeared on behalf of the defendant. After hearing the evidence adduced by the respective parties, and being fully advised in the premises, said judge, after due consideration, hereby makes and files these findings of fact and conclusions of law: 457

FINDINGS OF FACT.

I.

That all of the allegations of plaintiff's complaint are true save as hereinafter modified. That none of the allegations of defendant's answer are true except as hereinafter stated.

II.

That during all of the times covered and embraced herein, the above named defendant is and has been a South Dakota corporation, duly licensed to transact its corporate business within the state of Minnesota as a foreign corporation, under the provisions of Sections 6206 and 6207, Gen. Stat. Minnesota, 1913, and having its principal place of business at Groton, South Dakota; its principal places of business in the state of Minnesota being in the cities of Minneapolis and St. Paul in said state. 458

III.

That since the beginning of the present system of having the fees of the oil inspection department turned into the state treasury, the state has received as such fees during the said years and up to the time that the last of the fees accrued which are involved in this action, the following amounts: 459

Year Ending July 31,	Receipts
1903	$14,626.10
1904	30,334.05
1905	28,597.35
1906	30,242.70
1907	32,208.05
1908	43,864.15
1909	34,934.40
1910	50,667.67
1911	56,852.84
1912	63,354.35
1913	72,656.38
1914	81,565.90
July 31, 1914, to April 30, 1915,	62,689.20

IV.

460 That during the period from July 31, 1912, to April 30, 1915,—in addition to the foregoing cash payments,—fees for inspection under said law were charged, but are not as yet collected, against various persons, co-partnerships and corporations engaged in the oil business within said state, to the aggregate amount of $15,000; which amount includes the amount sought to be recovered in this action as well as amounts involved in two other actions now pending between plaintiff herein and other of said oil companies. That the several charges going to make up said sum of $15,000 are all against going concerns that, at the time the charge was made, were solvent and still are solvent.

V.

461 That the actual expenses of the state, made by the chief oil inspector from the specific aprpopriation that was made annually by the legislature for the use of the oil inspection department alone, in the conduct of the business of that department, for the years mentioned in paragraph III herein, have been as follows:

Year Ending July 31,	Expenses
1903	$13,657.37
1904	29,691.59
1905	27,956.90
1906	27,152.42
1907	29,140.35
1908	29,999.08
1909	30,288.05
1910	40,044.24
462 1911	40,494.08
1912	39,999.76
1913	47,117.62
1914	52,467.56
July 31, 1914, to April 30, 1915.	46,863.55

VI.

That the various amounts collected and amounts charged but not collected, for inspection under said Act, and the various amounts disbursed through the medium of the oil inspection department in the conduct, execution and enforcement of said Act, have at all times been matters of public record in the office of the auditor of said state, and that the annual amounts of such fees actually received, and the various annual amounts disbursed through the medium of the oil inspection department, as aforesaid,

have been set forth and published in the printed Biennial Reports of the auditor of said state. 463

VII.

That at all times covered and embraced by this action, defendant has been assessed, under the general tax laws of the state of Minnesota relating to personal property, upon all and the several illuminating oils and gasoline subject to the provisions of said Inspection Law, and owned and possessed by defendant within said state on and as of the first day of May in each year, and has at all times duly paid said taxes so levied and assessed.

VIII.

That the quantities of gasoline and oil which the defendant received in tank cars in the state of Minnesota during the period set forth in the complaint herein, and for which the state furnished to the defendant certificates 464 of inspection, which certificates the defendant accepted and retained, were as folows:

Gasoline	99,022 Bbls.
Oils	16,304 Bbls.
Total	115,326 Bbls.

That the out-of-state shipments that were made by the defendant from the above quantities of gasoline and oil, which shipments were reported to the oil inspection department by the defendant prior to the commencement of this action and upon which quantities the state rebated the inspection fees, were as follows:

Out state shipments of gasoline,	7,235 Bbls.
Out state shipments of oil,	3,601 Bbls.
Total out state shipments,	10,836 Bbls.

465

That since the commencement of this action the defendant has reported to the oil inspection department that further out-of-state shipments of said oil and gasoline had been made, the inspection fees of which additional out shipments should be deducted from the claim of the plaintiff herein, namely:

Additional out-of-state shipments of gasoline,	6,670 Bbls.
Additional out-of-state shipments of oil,	2,689 Bbls.
Total,	9,359 Bbls.

That the quantities of oil and gasoline belonging to the defendant, which the state inspected, were determined by the state in each instance by using the quantity specified on the invoice of the shipper, then in the hands of the de-

466 fendant. That the oil and gasoline so actually received by the defendant, during said period, and so inspected by the state, was actually 700 barrels of gasoline less than the quantity specified on the invoices, and was 100 barrels of oil less than the quantity specified on the invoices.

The following is a tabulated summary of the foregoing statements and figures:

	Gasoline	Oil	Totals
Bbls. Inspected	99,022	16,304	115,326
Less out-of-state shipments,	7,235	3,601	10,836
	91,787	12,703	104,490
Subsequently reported out-of-state shipments,	6,670	2,689	9,359
	85,117	10,014	95,131
467 Shortage of quantities below invoices,	700	100	800
	84,417	9,914	94,331
Fees at 10c per bbl.	$8,441.70	$991.40	$9,433.10

That of the commodity above mentioned as "gasoline", 4,829 barrels thereof were billed to the defendant by the refineries as "Naphtha."

That 2,415 barrels of said commodity billed to the defendant as naphtha were mixed by the defendant with high test gasoline of about 74-76 gravity and sold by the defendant in the state of Minnesota as and for gasoline, in the regular channels of trade. That said naphtha had a specific gravity test of not less than 57 degrees.

IX.

468 That all of the oils and gasoline mentioned herein were shipped to and received by the defendant in the state of Minnesota in tank cars containing more than 50 barrels each.

That during all of the times set forth in the complaint herein, the defendant has continued to notify the chief state inspector of oils, or one of the duly qualified and acting deputies, of the arrival of each and all of said tank cars, giving the number and date of arrival thereof, and has received and used certain official inspection certificates supplied to it by plaintiff through its oil inspection department, and has sold its oil and gasoline within the state of Minnesota under the branding and gravity indicated by said certificates.

X.

That during the time alleged in the complaint herein 469
the state through its deputy oil inspectors inspected and caused to be branded in the manner provided by statute 9,914 barrels of oil and 81,998 barrels of gasoline of the defendant within the state of Minnesota, all of which was then in the possession of the defendant for sale within this state; and that the fees accruing thereon to the plaintiff from the defendant amount to the sum of $9,191.20, and that no part thereof has ever been paid.

XI.

That said oils and gasoline, at the time such inspection was made, had all been brought into the state of Minnesota by common carriers from other states and had all reached the destination of said shipments, and were held at the place of business of defendant under its control and 470
not in necessary delay or in accommodation to the means of transportation but for the best purposes and profit of defendant for distribution throughout the state of Minnesota.

That all of said commodities were actually unloaded by the defendant from the tank cars in which they were shipped to the defendant and were mingled with other property of like character, and that the identity of the contents of each tank car was not preserved; and that they were all held for sale by the defendant in Minnesota and not designed for any particular purchaser or for reshipment to any particular place,—and became a part of the general mass of the property of the state.

XII.

That the testing of gasoline in the manner provided by 471
the statute in force at the time said inspections were made indicates to the public the degree of safety of such gasoline, and has a fair relation to the quality and value thereof. That such inspection protects the community, as applied to sales of gasoline in Minnesota, from frauds and impositions, and advises, informs and warns the public of the volatile character of said gasoline and the relative degree of care to be exercised in handling, storing and using the same.

CONCLUSIONS OF LAW.

I.

That the testing of gasoline by the state in the manner provided by statute during the time involved in this action is a proper and legitimate exercise of the police power of the state.

II.

472 That the oil and gasoline, the inspection of which is the subject of this action, was not when inspected, or when held subject to inspection by the defendant, a commodity then in interstate commerce.

III.

That the statutory charges for the inspection of said oil and gasoline involved in this action under all of the circumstances are not excessive.

IV.

That there is due and owing from the defendant to the plaintiff the sum of nine thousand one hundred ninety one dollars and twenty cents ($9,191.20), with interest as provided by law, together with the costs and disbursements of this action.

473 Let judgment be entered accordingly.

By the Court,

J. C. MICHAEL,
District Judge.

Dated February 28, 1916.

Let a stay of forty (40) days be entered from and after February 5, 1916.

Filed 2-28-16.

STATE OF MINNESOTA, County of Ramsey. DISTRICT COURT, Second Judicial District.

STATE OF MINNESOTA,
Plaintiff,
vs.
474 PURE OIL COMPANY, a corporation,
Defendant.

MOTION TO AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW.

To Lyndon A. Smith, Attorney General, and Egbert S. Oakley, Assistant Attorney General, attorneys for above named plaintiff:

You will please take notice that on Saturday, the 25th day of March, A. D. 1916, at 9 o'clock A. M., or as soon thereafter as counsel can be heard, the above named defendant will move the Honorable J. C. Michael, one of the judges of the above entitled court, at chambers, to make the following amended, substituted and additional findings and conclusions in the above entitled cause, viz:

1. That the tenth finding of fact be stricken out and that there be substituted therefor the following: 475

X.

"That during all of the time covered and embraced by the complaint herein plaintiff, through its deputy oil inspectors, inspected all of the oil and gasoline involved in this action; said inspection being made prior to the unloading of the same from the tank cars in which it was consigned and shipped to defendant.

That after allowing for all out-of-state shipments and for 2,414 barrels of naphtha, the inspection thus made embraced and included 82,003 barrels of gasoline and 9,914 barrels of oil."

2. That the eleventh finding of fact be stricken out and that there be substituted therefor the following:

476

XI.

That all of said oils and gasoline were purchased by defendant at points outside of the state of Minnesota, were loaded by the vendors thereof free on board of large steel tank cars (having a capacity of, and containing, over 50 barrels each) at place of purchase, and consigned and shipped to defendant at its several places of business within said state of Minnesota, in the original unbroken packages by common carriers and over various lines of railway carrying on and conducting a business in interstate traffic; freight thereon being paid by defendant.

That defendant's places of business in the cities of Minneapolis and St. Paul in said state of Minnesota were adjacent to the terminals and switching yards of Chicago Great Western Railway Company, in said cities. That said tank cars containing the oils and gasoline referred to in this action were either brought into the state of Minnesota over the line of railway of the company above named, or over other lines also engaged in interstate commerce and by them delivered in said state to said Chicago Great Western Railway Company. That in either event, on the arrival thereof, the Chicago Great Western Railway Company placed the tank cars on its switching tracks, adjacent to defendant's place of business, notified defendant of the arrival thereof, and awaited advice from defendant indicating whether said tank car or cars were to be accepted by defendant and switched onto the railway company's unloading tracks, or were to be reconsigned and shipped to defendant's customers, or returned to the vendor. That each of said tank cars, when so placed on said switching tracks by said railway company, had the name 477

478 of this defendant consignee plainly marked on the outside thereof.

That said unloading tracks consisted of two parallel tracks located on the property of, and entirely belonging to, said railway company. That upon advice to that effect from defendant said railway company transferred said tank cars from its said switching tracks to its said unloading tracks and placed said cars in position to be unloaded by defendant, through pipe lines owned and operated by defendant, into its various storage tanks; the latter being owned by defendant and located adjacent to said railway terminals, on land leased by defendant.

That the time elapsing between the arrival of each of said tank cars upon the switching tracks of said railway company and the unloading thereof by defendant averaged two days. That plaintiff's deputy inspectors were prompt-
479 ly notified by defendant at the time each of said cars arrived on said switching track and that said deputies called at defendant's said place of business practically every working day during the period covered by this action and inspected the contents of such tank cars as were placed upon the unloading tracks, before the same were unloaded.

That subsequent to said inspection the various oils and gasoline in said tank cars were unloaded by defendant into its various storage tanks, for sale by it in various forms and receptacles, to its customers in Minnesota and other states.

3. That the court make the following additional findings of fact, viz:

XIII.

That the oil inspection law in force during the period
480 covered by this action went into effect on July 2nd, 1909, and so continued until amended on April 23, 1915. That the fees designated and fixed by said law, and collected and charged by plaintiff under the operation and enforcement thereof were, at all times subsequent to the fiscal year ending July 31, 1909, largely and materially in excess, during each fiscal year, of the amount absolutely necessary to be, or in fact, expended by plaintiff in defraying the cost and expense incident and necessary to the conduct, enforcement and execution of the provisions and requirements of said law; said excess amounting, during the period covered from July 31, 1909, to April 30, 1915, to approximately $135,000.

XIV.

That during the entire period of the operation of said inspection law of 1909, including the time involved and

covered by this action, none of the fees collected thereunder by plaintiff were ever credited to the "Oil Inspection Fund" mentioned and referred to in said law, but were at all times credited to and formed part of the so-called "Revenue Fund" of the state; and that the excess hereinbefore referred to was at no time placed to the credit of the so-called "Oil Inspection Fund" but was at all times placed and deposited to the credit of, and became commingled with, and formed part and parcel of, the so-called "Revenue Fund" of the state, and that neither the same, nor any part thereof, was at any time in anywise appropriated or used in any manner whatsoever that did or would in anywise result in any benefit whatsoever to any person, persons, co-partnership, or corporation required to pay said inspection fees under said law. On the contrary, that said excess was, from time to time, appropriated to and used in defraying and paying other expenses of plaintiff in nowise connected with or incident to the conduct, execution and enforcement of said law. 481 482

4. That the twelfth finding of fact be stricken out and that there be substituted therefor the following:

XII.

That the test required and provided for by the law in question, as applied to gasoline, furnishes no evidence, or indication of any value, of the quality or efficiency of said product, or of its susceptibility or liability to explosion when mixed with air under normal conditions, and that said test subserves no practical purpose and does not in anywise operate to protect or promote the safety of the public, or the public welfare, or to protect the public from fraud or imposition. 483

5. That all and several the conclusions of law heretofore drawn and found by the court be stricken out and that there be substituted therefor the following:

CONCLUSIONS OF LAW.

I.

That all and several the oil and gasoline covered and embraced by this action, both when inspected and when in such physical position and condition as to be subject to, and call for, inspection under said law, was the subject of interstate commerce.

II.

That the fees designated and fixed by said law for the inspection of the oil and gasoline involved in this action were disproportionate to, and obviously and largely be-

484 yond the amount needed or absolutely necessary to pay for, the inspection services rendered, and largely and excessively beyond the amount needed or absolutely necessary to the proper conduct, enforcement and execution of the provisions and requirements of said law, and constituted an unlawful interference with, and burden upon, interstate commerce, in violation of the 3rd clause of section 8 and the 2nd clause of section 10, of Article I of the Constitution of the United States.

III.

That the testing of gasoline by the state in the manner provided by the inspection law in force during the period covered by the complaint in this action, was not and did not constitute a valid, proper, or legitimate exercise of the police power of the state, or a valid, proper, or legitimate
485 police regulation, but constituted an unlawful interference with, and burden upon, interstate commerce in violation of said 3rd clause of section 8, and said 2nd clause of section 10, of Article I of the Constitution of the United States.

IV.

That the fees designated and fixed by said law for the inspection of the oil and gasoline involved in this action, were so disproportionate to, and so obviously and largely beyond the amount needed or absolutely necessary to pay for, the inspection services rendered, and were so largely beyond the amount needed or absolutely necessary for the proper operation, enforcement and execution of the provisions and requirements of said law as to constitute and render said inspection law in reality a direct and unlaw-
ful tax upon the product subject to said law, and that said
486 tax is not uniform upon the same class of subjects and violates the provisions of Section 1 of Article 9 of the Constitution of the state of Minnesota.

V.

That said oil inspection law, in force and operation during the period covered by the complaint herein, was unconstitutional and void.

VI.

That plaintiff take nothing from defendant herein and that defendant be entitled to recover its costs and disbursements herein incurred.

Let judgment be entered accordingly.

Said motion will be based upon the files and records herein, and on the proceedings had and evidence given at the trial of said cause before the Honorable J. C. Michael,

on February 3rd, 1916, and subsequent days.

The grounds for said motion are that each of the findings of fact and conclusions of law hereinbefore proposed and moved are true and that the failure to make said findings and conclusions, and each thereof, is prejudicial to this defendant. 487

Dated March 15th, 1916.

NATHAN H. CHASE and
GEORGE E. DYER,
Attorneys for Defendant,
607-9 First Nat.-Soo Bldg.,
Minneapolis, Minnesota.

Service of the within motion to amend admitted this 15th day of March, 1916.

EGBERT S. OAKELY,
Asst. Atty. General.

Endorsed: Filed March 18, 1916. N. C. Robinson, clerk. By J. D. Swan, deputy. 488

STATE OF MINNESOTA, County of Ramsey. DISTRICT COURT, Second Judicial District.

STATE OF MINNESOTA,
vs. Plaintiff,
PURE OIL COMPANY, a corporation,
Defendant.

NOTICE OF MOTION FOR A NEW TRIAL.

Take notice that on March 25th, 1916, at 9 o'clock A. M. of that day, or as soon thereafter as counsel can be heard, the above named defendant will move said court, at chambers, at the court house, in the city of St. Paul, Ramsey county, Minnesota, for an order vacating and setting aside the decision in the above entitled cause, and granting a new trial therein on the following grounds: 489

1. Because the decision is not justified by the evidence.
2. Because the decision is contrary to law.
3. Because of errors of law occurring at the trial and duly excepted to by defendant.

Said motion will be based upon the case to be then and there settled in said action, and upon all the files, records and proceedings therein.

GEORGE E. DYER and
NATHAN H. CHASE,
Attorneys for Defendant,
607-9 First Nat.-Soo Bldg.,
Minneapolis, Minnesota.

490 To Messrs. Lyndon A. Smith, Attorney General and Egbert S. Oakley, Assistant Attorney General.

Endorsed: Due service of the within notice of motion is hereby admitted at St. Paul, this 16th day of March, A. D. 1916.

EGBERT S. OAKLEY,
Attorney for Plaintiff.

Filed March 18, 1916. N. C. Robinson, Clerk. By J. D. Swan, Deputy.

STATE OF MINNESOTA, County of Ramsey. DISTRICT COURT, Second Judicial District.

STATE OF MINNESOTA,
vs. Plaintiff,
PURE OIL COMPANY, a corporation,
491 Defendant.

STIPULATION.

It is hereby stipulated and agreed by and between the respective parties to the above entitled cause that the stay heretofore granted, expiring on March 16th, 1916, may be extended to and including April 16th, 1916.

Dated March 16th, 1916.

EGBERT S. OAKLEY,
LYNDON A. SMITH,
Attorneys for Plaintiff.
GEO. E. DYER and
NATHAN H. CHASE,
Attorneys for Defendant,
607-9 First Nat.-Soo Bldg.,
492 Minneapolis, Minnesota.

Endorsed: Filed March 18, 1916. N. C. Robinson, Clerk. By J. D. Swan, Deputy.

STATE OF MINNESOTA, County of Ramsey. DISTRICT COURT, Second Judicial District.

STATE OF MINNESOTA,
vs. Plaintiff,
PURE OIL COMPANY, a corporation,
Defendant.

ORDER DENYING MOTION TO AMEND FINDINGS.

The motion of the above named defendant, Pure Oil Company, for an order modifying and amending the find-

ings of fact and conclusions of law, as heretofore filed herein, was this day submitted by the attorneys for the respective parties, and, upon due consideration of said motion, 493

It is hereby ordered, that said motion be, and the same is hereby in all things wholly denied.

Dated March 25th, 1916.

JAMES C. MICHAEL,
District Judge.

Endorsed: Filed March 25, 1916. N. C. Robinson, Clerk. By G. A. Johnson, Deputy.

STATE OF MINNESOTA, County of Ramsey. DISTRICT COURT, Second Judicial District.

STATE OF MINNESOTA,
vs. Plaintiff, 494
PURE OIL COMPANY, a corporation,
Defendant.

ORDER DENYING MOTION FOR A NEW TRIAL.

The above entitled matter, being duly upon the special term calendar of the above named court for March 25th, 1916, came duly on to be heard on the motion of the above named defendant for an order vacating and setting aside the decision heretofore rendered in the above entitled cause and granting a new trial therein; Messrs. Lyndon A. Smith and Egbert S. Oakley appearing in behalf of plaintiff, and Nathan H. Chase, Esq., appearing in behalf of defendant. Upon giving said motion due consideration,

It is hereby ordered that said motion be, and the same hereby is, in all things denied. 495

Dated March 25th, 1916.

By the Court,

JAMES C. MICHAEL,
District Judge.

Endorsed: Filed March 25, 1916. N. C. Robinson, Clerk. By G. A. Johnson, Deputy.

496 STATE OF MINNESOTA, DISTRICT COURT,
County of Ramsey. Second Judicial District.

STATE OF MINNESOTA,
vs. Plaintiff,
PURE OIL COMPANY, a corporation,
Defendant.

STIPULATION.

It is hereby stipulated and agreed by and between the respective parties to the above entitled action that the stay heretofore granted, expiring on April 16, 1916, be and the same hereby is vacated and set aside.

It is further stipulated that the plaintiff may forthwith enter judgment pursuant to the findings of fact, conclu-
497 sions of law, and order for judgment heretofore made and filed in said case, said judgment not to be docketed.

Dated this 25th day of March, A. D. 1916.

EGBERT S. OAKLEY,
LYNDON A. SMITH,
Attorneys for Plaintiff.
NATHAN H. CHASE and
GEORGE E. DYER,
Attorneys for Defendant.

Endorsed: Filed March 25, 1916. N. C. Robinson, Clerk. By G. A. Johnson, Deputy.

STATE OF MINNESOTA, DISTRICT COURT,
ss.
498 County of Ramsey. Second Judicial District.

STATE OF MINNESOTA,
vs. Plaintiff,
PURE OIL COMPANY, a corporation,
Defendant.

AMOUNT OF JUDGMENT OR VERDICT.

Amount of judgment or verdict $10,135.46
Interest on same to March 25, 1916 included in judgment.

COSTS AND DISBURSEMENTS.

Statutory costs 10.00
Witness Fees, viz: Name, Allison N. Abbott; Residence, Minneapolis; No. days attendance, 1; No. miles traveled, 24 2.44

Name, N. C. Bein; Residence, Minneapolis; No. days attendance, 1; No. miles traveled 24	2.44
Name, E. H. Payte; Residence, St. Paul; No. days attendance, 3; No. miles traveled, 2	3.12
The above bill of costs and disbursements taxed and allowed at	4.00
	22.00
Total amount	$10,157.46

Dated March 25th, 1916.

N. C. ROBINSON,
Clerk.
By G. A. JOHNSON,
Deputy.

AFFIDAVIT OF DISBURSEMENTS.

STATE OF MINNESOTA, } ss.
County of Ramsey. }

Egbert S. Oakley being duly sworn, says on oath, that he is one of the Assistant Attorney Generals of the state of Minnesota, and one of the attorneys for the plaintiff in the above entitled action; and that the foregoing is a true and correct statement of the costs and disbursements of said plaintiff in the above entitled action; and that the foregoing items of disbursements, and each item thereof, have been actually and necessarily paid or incurred therein, by and on behalf of said plaintiff; and that each of the above named witnesses was a material witness for the said plaintiff in said action, and was duly sworn, and testified on the trial of said action, on behalf of said plaintiff; that each of said witnesses actually and necessarily traveled the number of miles above set opposite his name, in going from his said place of residence to, and returning to said place of residence from, the place of trial of said action, and, for the purpose of so testifying, actually and necessarily attended said court the number of days and on the dates hereinbefore stated; and that the residence of each of said witnesses is at the place above stated.

EGBERT S. OAKLEY.

Subscribed and sworn to before me this 25th day of March, 1916.

G. K. SPANGENBERG,
(Notarial Seal) Notary Public,
Ramsey County, Minnesota.

My commission expires March 11, 1922.

502 STATE OF MINNESOTA, DISTRICT COURT,
ss.
County of Ramsey. Second Judicial District.

STATE OF MINNESOTA,
vs. Plaintiff,
PURE OIL COMPANY, a corporation,
Defendant.

NOTICE OF TAXATION OF COSTS.

It is hereby stipulated and agreed by and between the respective parties to the above entitled action, that the within bill of costs and disbursements may be taxed and inserted in the judgment to be this day entered therein.

Dated March 25th, 1916.

503 EGBERT S. OAKLEY,
Assistant Attorney General.
Attorneys for Plaintiff.
NATHAN H. CHASE and
GEORGE E. DYER,
Attorneys for Defendant.

Endorsed: Filed March 25, 1916. N. C. Robinson, Clerk. By G. A. Johnson, Deputy.

STATE OF MINNESOTA, DISTRICT COURT,
County of Ramsey. Second Judicial District.

STATE OF MINNESOTA,
vs. Plaintiff,
504 PURE OIL COMPANY, a corporation,
Defendant.

JUDGMENT.

The above entitled cause came on duly for trial by the court (trial by jury having been duly waived) upon the 3rd, 4th and 5th days of February, 1916, W. J. Stevenson, as assistant attorney general for the state of Minnesota appeared for the plaintiff and N. H. Chase, appeared in behalf of the defendant. The court having heard the evidence and arguments of counsel and duly considered the same, on the 28th day of February, 1916, made and filed its findings of fact, conclusions of law and order for judgment.

Now, therefore, pursuant to said findings of fact, conclusions of law and order for judgment, and on motion of

Egbert S. Oakley, as assistant attorney general of the state of Minnesota, attorney for plaintiff, it is hereby ordered, adjudged and decreed that the plaintiff recover of the defendant ten thousand one hundred, thirty-five and 46/100 dollars with twenty-two and no/100 dollars as costs and disbursements of the action, making in the aggregate the sum of ten thousand one hundred fifty-seven and 46/100 dollars. 505

Witness, the Honorable Hascal R. Brill, judge of said court and the seal thereof, this 25th day of March, 1916.

N. C. ROBINSON,
Clerk of the District Court,
Ramsey County, Minnesota.
By G. A. JOHNSON,
Deputy.

Endorsed: Filed March 25, 1916. N. C. Robinson, Clerk. By G. A. Johnson, Deputy. 506

STATE OF MINNESOTA, ss. DISTRICT COURT,
County of Ramsey. Second Judicial District.

STATE OF MINNESOTA,
vs. Plaintiff,
PURE OIL COMPANY, a corporation,
Defendant.

NOTICE OF APPEAL TO SUPREME COURT.

To Messrs. Lyndon A. Smith and Egbert S. Oakley, Attorneys for the above named plaintiff, and to N. C. Robins, Esq., clerk of said District Court: 507

Please take notice, that the above named defendant, Pure Oil Company, appeals to the Supreme Court of the state of Minnesota, from the judgment of the said District Court entered herein on the 25th day of March, A. D. 1916, in favor of the above named plaintiff and against the said defendant, and from the whole thereof.

Dated this 27th day of March, A. D. 1916.

NATHAN H. CHASE and
GEORGE E. DYER,
Attorneys for Defendant,
607-9 First Nat.-Soo Bldg.,
Minneapolis, Minnesota.

508 Due service of the within notice of appeal admitted this 27th day of March, 1916.

LYNDON A. SMITH,
EGBERT S. OAKLEY,
Attorneys for Respondent.
N. C. ROBINSON, Clerk.
By G. P. RITT, Deputy.

Filed March 27, 1916. N. C. Robinson, Clerk. By G. P. Ritt, Deputy.

STATE OF MINNESOTA, County of Ramsey. DISTRICT COURT, Second Judicial District.

STATE OF MINNESOTA,
Plaintiff-Respondent,
vs.
509 PURE OIL COMPANY, a corporation,
Defendant-Appellant.

BOND.

Know all men by these presents, that we, Pure Oil Company, a corporation, as principal, and National Surety Company, of New York, a corporation, as surety, are held and firmly bound unto the state of Minnesota, plaintiff-respondent in the above entitled action, in the sum of twenty thousand and five hundred dollars ($20,500), lawful money of the United States, to be paid unto the said state of Minnesota, for which payment well and truly to be made, we jointly and severally bind ourselves and each of our successors and assigns, firmly by these presents.

510 Sealed with our seals and dated this 27th day of March, A. D. 1916.

The condition of this obligation is such, that whereas the said above named defendant, Pure Oil Company, has appealed to the Supreme Court of the state of Minnesota, from a judgment, and the whole thereof, duly entered in said action on March 25, 1916, in the total sum of ten thousand one hundred fifty-seven and 46/100 dollars ($10,157.46).

Now, therefore, if said appellant, Pure Oil Company, shall pay all costs and charges which may be awarded against it on such appeal, and shall pay the amount directed to be paid by said judgment, if it is affirmed, or part of such amount as to which the judgment is affirmed, if it is affirmed only in part, and shall pay all damages which are awarded against said appellant upon such appeal, then

this obligation shall be void; otherwise to remain in full force. 511

In testimony whereof, the above named principal and surety have respectively caused these presents to be duly executed and their respective corporate seals to be hereto affixed this 27th day of March, A. D. 1916.

PURE OIL COMPANY,
By L. B. HANCOCK,
President-Treasurer.
NATIONAL SURETY COMPANY,
By H. E. BERREAU,
Attorney in Fact.

Signed, sealed and delivered in presence of:
GEO. E. DYER
O. F. BEALL
As to Pure Oil Company.
(Corporate Seal of Pure Oil Company) 512
JAMES N. HUGHES
F. SIMCOCK
As to National Surety Co.
(Corporate Seal of National Surety Co.)

STATE OF MINNESOTA,
ss.
County of Hennepin.

On this 27th day of March, A. D. 1916, before me a notary public within and for said county, personally appeared L. B. Hancock, to me known to be the president-treasurer of the above named defendant, Pure Oil Company, and the person who executed the foregoing instrument in behalf of said Pure Oil Company, and acknowledged that he executed the same as the free act and deed of said Pure Oil Company.

O. O. ERLING, 513
(Notarial Seal) Notary Public,
Hennepin County, Minnesota.

My commission expires April 10th, 1916.

STATE OF MINNESOTA,
ss.
County of Hennepin.

On this 27th day of March, A. D. 1916, before me appeared H. E. Berreau to me personally known, who being by me duly sworn, did say that he is the attorney-in-fact of the National Surety Company, the corporation described in and who executed the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said H. E. Berreau acknowledged

514 said instrument to be the free act and deed of said corporation.

JAMES N. HUGHES,
(Notarial Seal) Notary Public,
Hennepin County, Minnesota.

My commission expires October 17, 1920.

The within bond and surety is hereby approved this 27th day of March, 1916.

JAMES C. MICHAEL,
District Judge.

Endorsed: Filed March 27, 1916. N. C. Robinson, Clerk. By G. P. Ritt, Deputy.

RETURN TO SUPREME COURT.

STATE OF MINNESOTA, 2ND JUDICIAL DISTRICT.
County of Ramsey.

515 I, N. C. Robinson, Clerk of the District Court, Ramsey County, and State of Minnesota, do hereby certify and return to the Honorable the Supreme Court of said State, that I have compared the foregoing paper writing with the original Notice of Appeal and Bond in the action therein entitled, now remaining of record in my office, and that the same is a true and correct copy and transcript of said original and the whole thereof.

Witness my hand and seal of said court, at St. Paul, this 27th day of March, A. D. 1916.

N. C. ROBINSON,
Clerk.
By G. P. RITT,
Deputy Clerk.

(Seal of)
516 (District Court)
(Ramsey County)

Endorsed: Filed Mar. 27, 1916. I. A. Caswell, Clerk.

STATE OF MINNESOTA, DISTRICT COURT,
County of Ramsey. Second Judicial District.

STATE OF MINNESOTA,
vs. Plaintiff-Respondent,
PURE OIL COMPANY, a corporation,
Defendant-Appellant.

STIPULATION.

It is hereby stipulated by and between the respective parties to the above entitled cause, that the appeal by the

defendant herein to the Supreme Court of this state may be placed upon the April, 1916, general term calendar of 517
said Supreme Court, and that the printed record and appellant's printed brief shall be served upon respondent on or before May 10th, 1916, and that respondent's printed brief shall be served upon appellant at least one week before the day on which said cause is to be argued on appeal in said Supreme Court.

Dated March 27th, 1916.

LYNDON A. SMITH,
EGBERT S. OAKLEY,
Attorneys for Plaintiff-Respondent,
NATHAN H. CHASE and
GEORGE E. DYER,
Attorneys for Defendant-Appellant,
607-9 First Nat.-Soo Bldg.,
Minneapolis, Minnesota. 518

STATE OF MINNESOTA,
IN SUPREME COURT.
APRIL TERM, 1916.

STATE OF MINNESOTA,
Plaintiff-Respondent,

vs.

PURE OIL COMPANY, a corporation,
Defendant-Appellant.

ASSIGNMENT OF ERRORS.

Appellant assigns the following errors, and asserts that the court below erred in the following particulars:

1. In finding that all of the allegations of the complaint 519
were true, save as modified in said findings. (Rec. Fol. 457.)

2. In finding that none of the allegations in appellant's answer were true, except as stated in said findings. (Rec. Fol. 457.)

3. In finding that at the time of the inspection by the state of 9914 barrels of oil and 81998 barrels of gasoline, all of the same was then in the possession of appellant for sale within the state. (Rec. Fol. 469.)

4. In finding that the fees accruing to the state for said inspection amounted to the sum of $9191.20, or to any sum whatsoever. (Rec. Fol. 469.)

5. In finding that said oils and gasoline, at the time of said inspection, had all reached the destination of said shipments. (Rec. Fol. 470.)

520 6. In finding that said oils and gasoline, at the time of said inspection, were held at the place of business of appellant under its control and not in necessary delay or in accommodation to the means of transportation, but for the best purposes and profit of appellant for distribution throughout the state of Minnesota. (Rec. Fol. 470.)

7. In finding that all of said commodities were actually unloaded by appellant from the tank cars in which they were shipped to appellant and were mingled with other property of like character. (Rec. Fol. 470.)

8. In finding that all of said commodities were held for sale by appellant in Minnesota and not designed for any particular purchaser or for re-shipment to any particular place. (Rec. Fol. 470.)

9. In finding that all of said commodities became a part of the general mass of the property of the state, and
521 that the identity of the contents of each tank car was not preserved. (Rec. Fol. 470.)

10. In finding, as a conclusion of law, that the oil and gasoline involved in this action was not, when inspected or when held subject to inspection by appellant, a commodity then in interstate commerce. (Rec. Fol. 472.)

11. In finding, as a conclusion of law, that the statutory charges for the inspection of the oil and gasoline involved in this action were not, under all of the circumstances, excessive. (Rec. Fol. 472.)

12. In finding, as a conclusion of law, that there was due and owing from appellant to respondent the sum of $9191.20; or any sum whatsoever. (Rec. Fol. 473.)

13. In ordering judgment to be entered in accordance with said conclusions of law. (Rec. Fol. 473.)

522 14. In denying appellant's motion to substitute appellant's proposed tenth finding of fact for the tenth finding of the court. (Rec. Fol. 475.)

15. In denying appellant's motion to substitute appellant's proposed eleventh finding of fact for the eleventh finding of the court. (Rec. Fols. 476-479.)

16. In denying appellant's motion for additional finding numbered XIII. Rec. Fol. 480.)

17. In denying appellant's motion for additional finding numbered XIV. (Rec. Fol. 481.)

18. In denying appellant's motion to substitute, for the conclusions of law found by the court, the six conclusions of law, and each thereof, proposed by appellant. (Rec. Fols. 483-487.)

19. In not making conclusions of law to the effect that the action should be dismissed.

20. In not ordering judgment to the effect that the action should be dismissed. 523

21. In denying appellant's motion to vacate and set aside the decision and for a new trial, on the ground that the decision was not justified by the evidence. (Rec. Fol. 489.)

22. In denying appellant's motion to vacate and set aside the decision and for a new trial on the ground that the decision was contrary to law. (Rec. Fol. 489.)

23. In denying appellant's motion to vacate and set aside the decision and for a new trial, because of errors of law occurring at the trial, and duly excepted to by appellant. (Rec. Fol. 489.)

24. In finding that the testing of gasoline, in the manner provided by the statute in force during the time covered by this action, indicates to the public the degree of safety of such gasoline. (Rec. Fol. 471.) 524

25. In finding that the testing of gasoline, in the manner provided by statute during said time, has a fair relation to the quality and value thereof. (Rec. Fol. 471.)

26. In finding that such inspection, as applied to sales of gasoline in Minnesota, protects the community from frauds and impositions and informs and warns the public of the volatile character thereof and of the relative degree of care to be exercised in handling, storing and using the same. (Rec. Fol. 471.)

27. In finding, as a conclusion of law, that the testing of gasoline by the state, during the time involved in this action, was a proper and legitimate exercise of the police power of the state. (Rec. Fol. 471.)

28. In denying appellant's motion to substitute appellant's proposed twelfth finding of fact for the twelfth finding of the court. (Rec. Fol. 483.) 525

29. In sustaining the objection to the following question asked appellant's witness, L. B. Hancock, viz.: "Will you state whether or not, referring now solely and simply to gasoline, it would be possible to ascertain, solely from a gravity test, whether the product so tested was what you would call a straight-run unblended product, or a product produced from the blending of a low grade oil such as kerosene with a high volatile high gravity gasoline?" (Rec. Fols. 81-83.)

30. In sustaining the objection to the following offer of proof by the same witness, viz.: "We offer to show by this witness that, so far as gasoline is concerned, that a test thereof, made solely by ascertaining the specific gravity thereof, would not enable the person making the test

526 to determine whether the product so tested consisted wholly of what is generally known as a straight-run unblended, unadulterated product, or whether the product so tested consists of a blending or mixture of a low or ordinary grade of kerosene oil with a gasoline product of high specific gravity, commonly known to the trade as casing-head gasoline, and that the gravity test would not be any indication of the quality, the gravity test solely, or the value of that gasoline product." (Rec. Fol. 84.)

31. In sustaining the objection to the following question asked the same witness, viz.: "You may state what that test is; what it consists of?" (Rec. Fol. 85.)

32. In sustaining the objection to the following offer of proof by the same witness, viz.: "We offer to show by this witness that the test commonly known as the distillation test, as applied to gasoline, will show and demon-
527 strate whether or not said gasoline so tested is a straight product, or whether, on the other hand, it is a product produced by blending a straight, unblended, unadulterated gasoline with a petroleum product of lower gravity and quality, such as kerosene or benzine, and will show the percentage of each product so blended to make up the product tested." (Rec. Fol. 86.)

33. In sustaining the objection to the following question asked the same witness, viz.: "I will ask you to state whether or not if a tank car full of gasoline was the product of the blending or mixing of a low grade kerosene with a highly volatile character of gasoline, such as what is known to the oil trade as casing-head gasoline, we will say on the 50-50 basis of blending or mixing, would a gravity test, solely, of that tank car of gasoline disclose that
528 fact?" (Rec. Fol. 87.)

34. In sustaining the objection to the following question asked of appellant's witness, Professor Frankforter, viz.: "I will ask you whether or not, in your opinion, that is the only accurate test, as applied to gasoline, for the purpose of ascertaining its quality?" (Rec. Fol. 131.)

35. In sustaining the objection to the following question asked the same witness, viz.: "I will ask you whether or not the true quality of a given grade of gasoline can be ascertained in any other manner than by the distillation test?" (Rec. Fol. 131.)

36. In sustaining the objection to the following question asked the same witness, viz.: "I will ask you whether the quality of gasoline, for practical commercial purposes, the same as now used, can be ascertained with accuracy and reliability by any other test than the distillation test?" (Rec. Fol. 131.)

37. In sustaining the objection to the following offer of proof by the same witness, viz.: "We offer to prove by this witness that, relating solely to the matter of gasoline, that the so-called distillation test is the only test by which the quality (using that term with regard to the ordinary commercial uses), of the product gasoline can be fairly and definitely and materially ascertained and determined?" (Rec. Fol. 132.) 529

38. In sustaining the objection to the following question asked appellant's witness, Matheis J. Desmond, viz.: "I will ask you whether or not there is maintained by the state, outside of the matter of bookkeeping, a so-called oil inspection fund, that is kept separate and apart from the general revenue fund of the state, as a matter of fact?" (Rec. Fol. 310.)

39. In sustaining the objection to the following question asked the same witness, viz.: "What is done in your office as a matter of bookkeeping, with the surplus there shown of receipts over and above the amount shown to have been expended, what do you charge it to?" (Rec. Fol. 312.) 530

40. In sustaining the objection to the following offer of proof by the same witness, viz.: "We offer to show by this witness that under the system of accounting in operation in the department of the state auditor of the state of Minnesota during the entire period covered by the operation of the oil inspection law of 1909, that any and all surplus shown by the books of that department at the end of each fiscal year, by taking the difference between the amount of inspection fees received by that department during the year, and deducting therefrom the amount shown by the books of that department to have been disbursed under that account, and for that corresponding year, was in each instance credited to the so-called general revenue fund of the state." (Rec. Fols. 312, 313.) 531

41. In sustaining the objection to the following offer of proof by the same witness, viz.: "We offer to prove by this witness that all moneys received as fees from the oil inspection department during the operation of the oil inspection law of 1909 during the period covered by this action, have been credited to the general revenue fund of the state, and that all disbursements, of which account has been made in the auditor's department, have been charged to the appropriation for that department made by the legislature of the State of Minnesota. I further offer to prove by this witness that any and all excess of receipts during the period covered by this action from fees in the

532 oil inspection department, over and above funds disbursed for the maintenance and operation of this department, have at all times gone into the general revenue fund of this state and have been used from time to time in defraying the general expenses of the state government, in the same method and manner as are the taxes collected by the state for paying general expenses incident to the government of this state." (Rec. Fols. 315, 316.)

STATE OF MINNESOTA.
IN SUPREME COURT.
APRIL TERM, 1916.

STATE OF MINNESOTA,
Respondent,

533 vs.

PURE OIL COMPANY, a corporation,
Appellant.

SYLLABUS.

State v. Bartles Oil Co., ... Minn. ...., 155 N. W. 1035, holding valid Laws 1909, Ch. 502 (G. S. 1913, Secs. 3619-3632), providing for the inspection of oil and gasoline and fixing the fees therefor, adhered to and followed.

Affirmed.

OPINION.

Action by the state to recover fees, amounting to $10,499.00, alleged to be due for inspecting illuminating oils and gasoline from February 1, 1913, to April 23, 1915, under the oil inspection law of 1909, G. S. 1913, §§3619-3632. The decision was for the plaintiff, judgment being
534 ordered against defendant in the sum of $9,191.20 with interest and costs. After motions to amend the findings and for a new trial were denied, judgment was entered on the decision. Defendant appealed from this judgment.

The contentions of defendant in this court may be thus stated: (1) The law required inspection of the oils and gasoline prior to the unloading thereof from the tank cars in which they are received, and at this time the commodities are in interstate commerce, the inspection law operating upon them as subjects thereof. (2) The fees prescribed by the act are largely in excess of what was absolutely necessary to its proper enforcement and operation, and the application of the net excess so unlawful, that the act is void, under the federal constitution if the commodities were subjects of interstate commerce, under the state constitution if they were not. (3) In any case the pro-

visions of the act applying to the inspection of gasoline can not be sustained as an exercise of the police power, 535
and consequently the act is void to that extent.

It is apparent that these questions are practically identical with those disposed of in State v. Bartles Oil Co., 155 N. W. 1035. On the first point made by defendant in the present case, this court held in the Bartles case that the inspection for which a recovery was had was not an inspection of property the subject of interstate commerce. Defendant thinks we were wrong in that decision, and also claims that the facts in this case differentiate it from the Bartles case. The act challenged was the same in both cases, §§3619-3632, G. S. 1913, as they stood before Laws 1915, Ch. 271 was enacted. §3628 provided that "oil or gasoline shipped in tanks or tank cars shall not be unloaded until it is duly inspected, providing such inspection is made within 24 hours after the arrival and 536
notice setting forth the number of the car and date of its arrival has been given the inspector." The act does not provide for an inspection after the oil is unloaded, but it does not expressly say, as did Laws 1889, Ch. 246, construed in Willis v. Standard Oil Co., 50 Minn. 290, that the oil "shall not be transferred into warehouse or storage tanks, or unloaded, until so inspected." It is evident, however, that inspection after the oil is pumped from a tank car into a storage tank and mingled with other oils, would give little or no indication of the character of the oil taken from the particular tank car. We will note the impracticability if not impossibility of having separate storage tanks for the contents of each tank car that arrives. We will therefore treat the act under consideration as contemplating inspection in the original tank cars before they are unloaded, at least wherever it is possible, and the 537
evidence in this case is that the inspection was usually, though not in all instances, so made. We do not think, however, that there is anything here to distinguish this case from the Bartles case. The facts as stated in the opinion in that case are the facts in this case: "Oil products are shipped to it (defendant) from the oil producing states in tank cars and are stored in its storage tanks. * * * They are on the defendant's private property, leased or owned, and the cars are switched there and unloaded. The railroads make and the defendant accepts delivery there. The oil and gasoline have no further definite destination. They are for sale. They are incorporated into the general mass of the property of the State. Most of the products are sold in Minnesota. Some are sold in other states. When shipped out of the State the inspection

538 charges are rebated—not because the products shipped are the subject of interstate commerce, but because the State does not impose its inspection for the protection of the public of another State. The oil and gasoline are mixed by the defendant with other oil and gasoline of like quality in the storage tanks."

It is vigorously and ably argued that the oil and gasoline while in the tank cars, before unloaded into the storage tanks, are the subjects of interstate commerce. It is insisted that the tank cars with their contents are "original packages," and that the statement to the contrary in the opinion in the Bartles case is not supported by reason or authority. Counsel goes quite exhaustively into the decisions, from Brown v. Maryland, 12 Wheat. 419, to Leisy v. Hardin, 135 U. S. 100; American Steel & Wire Co. v. Speed, 192 U. S. 500; General Oil Co. v. Crain, 209
539 U. S. 211, and C. M. & St. P. R. Co. v. Iowa, 234 U. S. 334. We fully appreciate the strength of the argument made, but we still think that the decisions warranted the holding in the Bartles case, and warrant holding in the case at bar that the gasoline and oil, though still in the tank cars waiting to be unloaded, was property brought to rest in this state, and for which the protection of the state is necessary. Though in the Crain case the oil was inspected after it was unloaded from the tank cars into storage tanks, the reasoning of that case, and the decisions in American Steel & Wire Co. v. Speed, supra; Susquehanna Coal Co. v. South Amboy, 228 U. S. 665; Bacon v. Illinois, 227 U. S. 504, and C. M. & St. P. Ry. Co. v. Iowa, supra, give sufficient support to the statement that this is not a controlling fact. The important thing is that the transportation was ended, the oil and gasoline at rest in the
540 state and subject to sale here. The "original package" test for determining when an article ceases to be a subject of interstate commerce is not applicable to cases of this kind. We adhere to and follow the decision in the Bartles case on this point:

But, as said in the Bartles case, if we are mistaken, if the oil and gasoline were subjects of interstate commerce at the time of the inspection, the statute is valid as a proper exercise of the police power, if the inspection, though incidentally affecting, did not unduly burden interstate commerce. This is not disputed, but it is contended here as it was in the Bartles case, that the inspection charges provided by the act were not reasonable, but were so in excess of the cost of inspection as to make the law a revenue measure, rather than an inspection law. The facts bearing upon this question are identical with those in the

Bartles case. We held there, after listening to arguments 541
of great ability, and after much deliberation, that it was not shown that the charges provided for were so unreasonable and disproportionate to the cost of rendering the service as to warrant holding the act unconstitutional. We have re-examined the question, after another able presentation, with the result that we adhere to our opinion. We can add nothing to what is said in the opinion in the Bartles case on this point.

The gravity test for gasoline is again attacked in this case. Counsel in the Bartles case laid great stress on this point, and it was decided that the act was in this respect a proper police measure and not in contravention of the constitution. We still have the same opinion. There is force in the claim, based in part upon the testimony of experts, that the gravity test as applied to gasoline is alone of no value for the purpose of determining the 542
quality or volatile character of any but pure, straight run, unblended gasoline. But we are not prepared to say that the legislature had no basis for considering this test some protection of the public against fraud and imposition, if not against danger in the use of gasoline not so tested.

We might well have said simply that the Bartles case controls this on all points, but we have preferred to consider the questions anew in the light of the arguments made in this case. After doing so we conclude that the Bartles case was correctly decided and should be adhered to.

Judgment affirmed.

BUNN, J.

TRANSCRIPT OF JUDGMENT. 543
STATE OF MINNESOTA, SUPREME COURT.
APRIL TERM, A. D. 1916.
No. 11.

STATE OF MINNESOTA,

Respondent,

vs.

PURE OIL COMPANY,

Appellant.

Pursuant to an order of Court duly made and entered in this cause July 14, A. D. 1916.

It is here and hereby determined and adjudged that the judgment of the Court below, herein appealed from, to-wit, of the District Court of the Second Judicial District,

544 sitting within and for the County of Ramsey, be and the same hereby is in all things affirmed.

And it is further determined and adjudged that the respondent above named, do have and recover of said appellant herein the sum and amount of thirty-two and 50/100 dollars ($32.50) costs and disbursements in this cause in this Court, and that execution may be issued for the enforcement thereof.

Dated and signed July 25, A. D. 1916.

By the Court.

Attest:

I. A. CASWELL,
Clerk.

Statement for Judgment.

Statutory Costs $25.00 Printer $7.50 Clerk $

545 Acknowledgment $ Return $ Postage and Express $ Filing Mandate $ Total $32.50.

STATE OF MINNESOTA,

ss.

Supreme Court.

I, I. A. Caswell, Clerk of said Supreme Court, do hereby certify that the foregoing is a full and true copy of the Entry of Judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

Witness my hand and seal of said Supreme Court at the Capitol, in the City of St. Paul, July 25, A. D. 1916.

I. A. CASWELL,
Clerk.

546 (Seal of the Supreme Court)
(State of Minnesota.)

Filed July 25, A. D. 1916. I. A. Caswell, Clerk.

STATE OF MINNESOTA.
IN SUPREME COURT.
OCTOBER TERM, 1916.

STATE OF MINNESOTA,
Plaintiff-Respondent,

vs.

PURE OIL COMPANY, a corporation,
Defendant-Appellant.

PETITION FOR WRIT OF ERROR.

To the Honorable Calvin L. Brown, Chief Justice of the

Supreme Court of the State of Minnesota:

The petition of Pure Oil Company, a corporation under 547
the laws of the State of South Dakota, defendant in the Court below and appellant in the Supreme Court of the State of Minnesota, respectfully shows:

That there is error in the record of proceedings in this cause in the Supreme Court of the State of Minnesota, which is the highest Court of law and equity of the State of Minnesota in which a decision can be had in this controversy,—in that the said Court has, on July 14th, 1916, rendered a decision affirming a judgment theretofore rendered and docketed in and by the District Court in and for the County of Ramsey and State of Minnesota against petitioner herein; and this petitioner respectfully shows that in the decision and judgment, the error in which is herein complained of, there was drawn in question the validity of a Statute of the State of Minnesota, namely, 548
Chapter 20, General Statutes of Minnesota, 1913, on the ground of its being repugnant to, and in contravention of, Sections 8 and 10, of Article I of the Constitution of the United States, the said decision and judgment being in favor of the validity of said Statute,—contrary to the contention of petitioner; and that by the Answer duly interposed by petitioner in this cause, and other proceedings in said cause, a right, privilege and immunity were especially set up and claimed by petitioner and appellant under the Constitution of the United States, and the said decision in this Court is against such right, privilege and immunity; all of which appears in the record and proceedings in this suit, whereby manifest error has happened to the great damage of appellant, as shown more in detail by the assignment of errors filed with this petition.

Wherefore, Said petitioner and appellant, Pure Oil Com- 549
pany, a corporation as aforesaid, prays for an allowance of a writ of error and such other process as may cause the said error to be corrected by the Supreme Court of the United States, and for a reversal of the judgment in said action.

Dated October 24th, 1916.

NATHAN H. CHASE and
GEORGE E. DYER,
Attorneys for Petitioner and Appellant,
607-9 First Nat.-Soo Bldg.,
Minneapolis, Minnesota.

STATE OF MINNESOTA,

ss.

County of Hennepin.

Nathan H. Chase, being first duly sworn on oath says:

That he is one of the attorneys for the petitioner above
550 named; that he has read the said petition and knows the contents thereof and that the same is true to the best of affiant's knowledge and belief.

NATHAN H. CHASE.

Subscribed and sworn to before me this 24th day of October, A. D. 1916.

A. H. KARATZ,
(Notarial Seal) Notary Public,
Hennepin County, Minnesota.

My commission expires July 19, 1922.
Endorsed: Filed Oct. 24, 1916. I. A. Caswell, Clerk.

STATE OF MINNESOTA.
IN SUPREME COURT.
OCTOBER TERM, 1916.

551

STATE OF MINNESOTA,
Plaintiff and Defendant in Error,

vs.

PURE OIL COMPANY, a corporation,
Defendant and Plaintiff in Error.

ASSIGNMENTS OF ERROR.

Pure Oil Company, a corporation, Plaintiff in Error in the above entitled cause, files herewith its petition for a writ of error and avers and shows that in the record and proceedings in said cause the Supreme Court of the State of Minnesota erred to the grievous injury and wrong of the Plaintiff in Error herein, and to the prejudice and
552 against the rights of the Plaintiff in Error herein, in the following particulars, to-wit:

1. The Supreme Court of the State of Minnesota erred in holding and deciding that illuminating oil, gasoline, or other products of petroleum, when shipped into the State of Minnesota from other states, in tank cars in usual form, consigned to Plaintiff in Error in said State of Minnesota, did not constitute "original packages," prior to the removal of any of the contents thereof from said tank cars.

2. The Supreme Court of the State of Minnesota erred in holding and deciding that the "original package" test for determining when an article ceases to be a subject of interstate commerce, was not applicable to the case at bar.

3. The Supreme Court of the State of Minnesota erred in holding and deciding, that at the time inspection was required to be made, under Chapter 502 of the Laws of the

State of Minnesota for the year 1909, approved April 24, 1909, entitled "An Act relating to the inspection of petroleum products, the appointment of chief inspector of oils and deputy inspectors, manner of inspection, establishing fees for inspection and salaries of inspectors, prohibiting the sale of adulterated oils, and providing penalties for violation thereof" (Chapter 20, General Statutes of Minnesota, 1913), the commodity subject to inspection thereunder was not then the subject of interstate commerce and that said Inspection Act did not operate upon it as such. 553

4. The Supreme Court of the State of Minnesota erred in holding and deciding that the oil and gasoline, though still in the tank cars waiting to be unloaded, was property brought to rest in the State of Minnesota, and for which the protection of the State was necessary.

5. The Supreme Court of the State of Minnesota erred in holding and deciding that the charge or tax imposed by said Chapter 502 of the Laws of Minnesota for the year 1909, was valid, and that said charge or tax, and said Act, were not in conflict with the Constitution of the United States as being repugnant to, and violative of, the third clause of Section 8, Article I of the Constitution of the United States, in that the charges or taxes prescribed by said Chapter 502 of the Laws of Minnesota for the year 1909, interfered with the freedom of commerce among the several states, and the exclusive power of Congress over the same. 554

6. The Supreme Court of the State of Minnesota erred in holding and deciding that the charge or tax imposed by said Chapter 502 of the Laws of Minnesota for the year 1909, was valid, and that said charge or tax, and said Act, were not in conflict with the Constitution of the United States as being repugnant to, and violative of, the second clause of Section 10, Article I of the Constitution of the United States, in that said charges or taxes so imposed and prescribed by said Chapter 502 of the Laws of Minnesota for the year 1909 are used for purposes other than the execution of said Inspection Act and that said charges or taxes are far in excess of what is needed or absolutely necessary for the execution of said Inspection Act. 555

7. The Supreme Court of the State of Minnesota erred in holding and deciding that the charge or tax imposed by said Chapter 502 of the Laws of Minnesota for the year 1909, was valid, and that said charge or tax, and said Act, was not in conflict with the Constitution of the United States as being repugnant to, and violative of, the 14th Amendment of the Constitution of the United States, in

556 that it deprived Plaintiff in Error herein of its property without due process of law.

8. The Supreme Court of the State of Minnesota erred in holding and deciding that said Chapter 502 of the Laws of Minnesota for the year 1909, is a valid and legal exercise of the police power of the State of Minnesota.

9. The Supreme Court of the State of Minnesota erred in affirming the judgment theretofore rendered and docketed in said cause in favor of Defendant in Error herein, and against Plaintiff in Error herein.

10. The Supreme Court of the State of Minnesota erred in not reversing the judgment heretofore rendered and docketed in favor of Defendant in Error herein and against Plaintiff in Error herein and in not ordering and decreeing judgment in favor of Plaintiff in Error herein and against Defendant in Error herein.

557 Wherefore, and for these and other manifest errors appearing in the record, said Pure Oil Company, Plaintiff in Error, prays that the said decision and judgment of said Supreme Court of the State of Minnesota, dated July 14th, 1916, be reversed and that it have judgment for its costs.

Dated October 24th, 1916.

NATHAN H. CHASE and
GEORGE E. DYER,
Attorneys for Pure Oil Company,
Plaintiff in Error,
607-9 First Nat.-Soo Bldg.,
Minneapolis, Minn.

Endorsed: Filed Oct. 24, 1916. I. A. Caswell, Clerk.

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558 STATE OF MINNESOTA.
IN SUPREME COURT.
OCTOBER TERM, 1916.

STATE OF MINNESOTA,
Plaintiff-Respondent,

vs.

PURE OIL COMPANY, a corporation,
Defendant-Appellant.

ORDER OF COURT ALLOWING WRIT OF ERROR.

In this cause application having been made to me, as Chief Justice of the Supreme Court of the State of Minnesota, that being the highest Court of record in this State in which said cause can be heard, for the allowance of a writ of error to remove said cause to the Supreme Court

of the United States for review in accordance with the Constitution and laws of the United States and rules of 559
practice of the Supreme Court of the United States, and for fixing and approving the bond on removal of the said cause to the Supreme Court of the United States:

It is hereby ordered, this 24th day of October, 1916, that the said writ of error be, and the same hereby is, allowed and that the same may be issued by any officer authorized to issue the same, and that said appellant, Pure Oil Company, give bond in the sum of $15,000.00, to the State of Minnesota, with qualified sureties thereon, conditioned that said Pure Oil Company shall prosecute its writ of error to effect and answer all damages and costs that may be adjudged, and shall pay any final judgment rendered in said action, if it fails to make good its plea; which said bond, when duly approved, shall operate as a supersedeas bond. 560

Dated October 24th, 1916.

CALVIN L. BROWN,
Chief Justice of the Supreme
Court of the State of Minnesota.

Endorsed: Filed Oct. 24. 1916.
I. A. CASWELL, Clerk.

STATE OF MINNESOTA.
IN SUPREME COURT.
OCTOBER TERM, 1916.

STATE OF MINNESOTA,
Plaintiff-Respondent,

vs.

PURE OIL COMPANY, a corporation, 561
Defendant-Appellant.

BOND AND APPROVAL THEREON.

Know all men by these presents, that we, Pure Oil Company, a corporation, as principal, and L. J. Slade and W. R. Hoag, as sureties, are held and firmly bound unto the State of Minnesota in the sum of fifteen thousand dollars ($15,000.00), lawful money of the United States, to be paid unto the said State of Minnesota, for which payment well and truly to be made we jointly and severally bind ourselves and each of our heirs, executors and administrators firmly by these presents.

Sealed with our seals, and dated this 24th day of October, A. D. 1916.

562 The condition of this obligation is such that whereas, at the April, 1916, term of the Supreme Court of the State of Minnesota, in a suit pending in said court between the State of Minnesota, plaintiff-respondent, and the above named Pure Oil Company, defendant-appellant, the final decree and decision was rendered against said appellant on July 14th, 1916, and the said appellant having obtained a writ of error and filed a copy thereof in the office of the said court to reverse the decree and decision in the aforesaid suit, and a Citation directed to the said State of Minnesota, citing and admonishing it to be and appear at a Supreme Court of the United States at Washington, within thirty (30) days from the date hereof:

Now, therefore, the condition of the above obligation is such, that if the said Pure Oil Company, a corporation, shall prosecute said writ of error to effect, and answer all
563 damages and costs, if it shall fail to make said plea or appeal good, and shall pay any final judgment rendered in said action, then this obligation to be void; otherwise to remain in full force and virtue.

In testimony whereof, the above named principal has caused these presents to be duly executed, and its corporate seal affixed thereto, and the above named sureties have hereunto set their hands and seals this 24th day of October, A. D. 1916.

PURE OIL COMPANY.
By L. B. HANCOCK,
President-Treasurer.

(Corporate)
(Seal)

L. J. SLADE (Seal)
W. R. HOAG (Seal)

564 Signed, Seal and Delivered in Presence of:
C. C. DURRIN
GEORGE E. DYER

STATE OF MINNESOTA,
ss.
County of Hennepin.

On this 24th day of October, A. D. 1916, before me, a Notary Public within and for said County, personally appeared L. B. Hancock, to me known to be the president-treasurer of the above named Pure Oil Company, the corporation described in and who executed the foregoing instrument and acknowledged that the seal affixed to said instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation, by authority of its Board of Directors,

and the said L. B. Hancock acknowledged said instrument to be the free act and deed of said corporation. 565

G. L. CHAMBERLIN,
(Notarial Seal) Notary Public,
Hennepin County, Minnesota.

My commission expires Oct. 30, 1918.

STATE OF MINNESOTA,
ss.
County of Hennepin.

On this 24th day of October, A. D. 1916, before me, a Notary Public within and for said County, personally appeared L. J. Slade and W. R. Hoag, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed and as the free act and deed of each of them.

G. L. CHAMBERLIN, 566
(Notarial Seal) Notary Public,
Hennepin County, Minnesota.

My commission expires Oct. 30, 1918.

STATE OF MINNESOTA,
ss.
County of Hennepin.

L. J. Slade and W. R. Hoag, being duly sworn, say, each for himself, that he is one of the sureties within named; that he is a resident and freeholder of the State of Minnesota, and worth the amount for which he justifies herein, below stated, above his debts and liabilities, and exclusive of his property exempt from execution.

L. J. SLADE,
Amount of Justification
$15,000.00 567

W. R. HOAG,
Amount of Justification
$15,000.00

Subscribed and sworn to before me this 24th day of October, A. D. 1916.

G. L. CHAMBERLIN,
(Notarial Seal) Notary Public,
Hennepin County, Minnesota.

My commission expires Oct. 30, 1918.

The foregoing and within Bond and sureties are hereby approved this 24th day of October, A. D. 1916.

CALVIN L. BROWN,
Chief Justice of the Supreme
Court of Minnesota.

Endorsed: Filed Oct. 24, 1916. I. A. Caswell, Clerk.

WRIT OF ERROR.

568 United States of America—ss.

The President of the United States of America:

To the Honorable the Judges of the Supreme Court of the State of Minnesota, Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court, before you, at the April Term, 1916, thereof, between State of Minnesota, Plaintiff, and Pure Oil Company, a corporation, Defendant, manifest error hath happened, to the great damage of the said Pure Oil Company, a corporation, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, Do Command You, if judgment be therein given, and then, under your seal, dis-
569 tinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the said record and proceedings aforesaid at the Capitol in the City of Washington, District of Columbia, and filed in the office of the Clerk of the Supreme Court of the United States, on or before the 23rd day of November, 1916, to the end that the record and proceedings aforesaid, being inspected, the Supreme Court of the United States may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness, the Honorable Edward D. White, Chief Justice of the United States, this 24th day of October, A. D. 1916.

570 Issued at office in St. Paul, Minnesota, with the seal of the District Court of the United States for the District of Minnesota, Third Division.

(Seal of U. S. District Court)
(Dist. of Minnesota)
(Third Division)

CHARLES L. SPENCER,
Clerk of the District Court of the
United States of America
for the District of Minnesota.

Allowed by Calvin L. Brown, Chief Justice of the Supreme Court of Minnesota.

STATE OF MINNESOTA.
IN SUPREME COURT. 571
OCTOBER TERM, 1916.

STATE OF MINNESOTA,
Defendant in Error,

vs.

PURE OIL COMPANY, a corporation,
Plaintiff in Error.

CITATION.

To the State of Minnesota:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty (30) days from the date hereof, pursuant to a writ of error, filed in the Clerk's office of the Supreme 572
Court of the State of Minnesota, in suit wherein Pure Oil Company, a corporation, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the decision and judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Calvin L. Brown, Chief Justice of the Supreme Court of the State of Minnesota, this 24th day of October, A. D. 1916.

CALVIN L. BROWN,
Chief Justice of the Supreme
Court of Minnesota.

Due and personal service of the within Citation admitted this 24th day of October, A. D. 1916.

LYNDON A. SMITH, 573
Attorney General of the State of Minnesota.

Endorsed: Filed Oct. 24, 1916. I. A. Caswell, Clerk.

RETURN TO WRIT.

574 UNITED STATES OF AMERICA,

ss.

Supreme Court of Minnesota.

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of Minnesota, at my office, in the city of St. Paul, Minnesota, this 31st day of October, A. D. 1916.

(Seal of the Supreme Court)
(State of Minnesota)

I. A. CASWELL,

575 Clerk Supreme Court of Minnesota.

STATE OF MINNESOTA.
IN SUPREME COURT.
OCTOBER TERM, 1916.

STATE OF MINNESOTA,
Plaintiff-Respondent,

vs.

PURE OIL COMPANY, a corporation,
Defendant-Appellant.

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576 STIPULATION.

It is hereby stipulated that the following parts of the Record herein are deemed necessary for the consideration of this cause by the Supreme Court of the United States and that the same may be incorporated into the transcript of the record and printed for that purpose, to-wit:

1. Petition for Writ of Error.
2. Assignments of Error.
3. Order allowing Writ of Error.
4. Bond and Approval.
5. Writ of Error, and Return thereon.
6. Citation and proof of service thereof.
7. Record from the District Court of Ramsey County, Minnesota, showing all procedings in that court contained

in Appellant's Record in the Supreme Court of Minnesota, viz: 577

(a) Summons.
(b) Complaint.
(c) Amended Answer.
(d) Reply.
(e) Stipulation as to Reply.
(f) Settled Case.
(g) Plaintiff's Exhibit "A."
(h) Plaintiff's Exhibit "B."
(i) Plaintiff's Exhibit "C."
(j) Findings.
(k) Motion to Amend Findings.
(l) Notice of Motion for New Trial.
(m) Stipulation Extending Stay.
(n) Order denying Motion to Amend Findings.
(o) Order denying Motion for New Trial. 578
(p) Stipulation for Entry of Judgment.
(q) Taxation of Costs.
(r) Judgment.
(s) Notice of Appeal to Supreme Court.
(t) Bond on Appeal.
(u) Return of Clerk, District Court, Ramsey Co.,
(v) Stipulation on Appeal.
(w) Assignments of Error.

8. Opinion of the Supreme Court of Minnesota.
9. Transcript of Judgment.

Dated November 8th, 1916.

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Endorsed: Filed Nov. 8, 1916. I. A. Caswell, Clerk.

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Supreme Court of the United States

October Term, 1916

Number 785

PURE OIL COMPANY, a corporation,

Plaintiff in Error,

—vs—

STATE OF MINNESOTA,

Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

BRIEF FOR PLAINTIFF IN ERROR.

Writ of error to review a judgment of the Supreme Court of the State of Minnesota, entered on July 25th, 1916, affirming a judgment of the District Court of Ramsey County of that State, rendered in favor of Defendant in Error, on March 25th, 1916, in the sum of $10,157.46. (R. 166, 181.)

STATEMENT OF THE CASE.

Suit by the State of Minnesota to recover $10,449.00, alleged to be due and owing it for fees for inspection of illuminating oils and gasoline from February 1st, 1913, to April 23rd, 1915, under the Oil Inspection Law of 1909, (Minn. G. S. 1913, §§ 3619-3632,) and prior to its amendment on the date last named. (R. 1-4).

The defense was based upon the following grounds:

First: That none of the oils and gasoline referred to in the complaint had ever been inspected, in any manner whatsoever, by the State or by any of its representatives. (R. 5).

Second: That the Oil Inspection Law of 1909, under which the fees were claimed, operated upon a commodity that was at that time the subject of interstate commerce, imposed a fee so excessive and so beyond the amount absolutely necessary to the execution and enforcement of said act as to make it in effect a revenue measure rather than an inspection act, and was consequently unconstitutional because of its repugnancy to the Second Clause of Section 10, Article I, of the Federal Constitution. (R. 7-11).

Third: That for the same reason the law in question was unconstitutional because of its repugnancy to the Third Clause of Section 8, Article I, of the Federal Constitution. (R. 11-12.)

Fourth: That said Inspection Law was unconstitutional in that if construed as a tax measure it was repugnant to Section 1, Article 9, of the Constitution of the State of Minnesota, which provides, in part, that "Taxes shall be uniform upon the same class of subjects." (R. 12).

Fifth: That insofar as said Inspection Law applied to gasoline it did not constitute, or operate as, a valid exercise of the police power of the State, in that it in no wise served to protect or safeguard the public health, morals, safety or con-

venience, and consequently was repugnant to the 7th Section of Article I of the State Constitution and the 14th Amendment to the Federal Constitution, providing, among other things, that "No person shall.....be deprived of life, liberty or property, without due process of law"; and was further repugnant to Section 1, Article 9, of the state constitution, providing for uniformity of taxation upon the same class of subjects. (R. 12-13).

The case was tried by the Court, without a jury, upon evidence adduced at the trial, supplemented by an agreed statement covering certain facts involved in the case; said statement being Plaintiff's Exhibit "A", inserted at the end of the oral testimony. (R. 146-150).

With regard to the first defense, based on non-inspection, the trial court found adversely to Plaintiff in Error and no further question was raised or presented on that point.

The following facts, pertinent to the second, third, fourth and fifth defenses, stand absolutely uncontroverted on the record:

Plaintiff in Error (hereinafter referred to as the Oil Company), is a South Dakota corporation, duly admitted to transact its business in Minnesota; its principal place of business in that state being at Minneapolis. (R. 77).

During the period covered by this action, and for many years prior thereto, it was and had been conducting a large jobbing and retail business in illuminating oils, gasoline and other products of petroleum, with branch offices in numerous states of the Union and in Canada. (R. 77).

The illuminating oils and gasoline involved were all purchased at points outside of the state of Minnesota, were loaded by the vendors thereof free on board of large steel tank cars (each containing an average of 145 barrels, of 55 gallons to the barrel) at place of purchase, and consigned and shipped to the Oil Company at either Minneapolis or St. Paul, in Min-

nesota, over various lines of railway carrying on and conducting a business in interstate traffic; freight thereon being paid by the consignee. (R. 25, 27, 100).

The company's place of business in Minneapolis was located at First Street and Thirteenth Avenue South, immediately adjoining and at the end of one of the switching yards of the Chicago Great Western Railroad Company. It consisted of an office and warehouse, a pumping station on the west, across the street, and eleven storage tanks, having a total capacity of some 500,000 gallons, located across on the diagonal corner. All of the structures mentioned were on property leased by the Oil Company. (R. 22, 23, 60).

The switching yards of the Chicago Great Western were located immediately west of the company's pumping station and consisted of four switch tracks, so termed, and two tracks designated as unloading tracks. These six tracks were all spur tracks and were fed by a main track from a larger yard of the railroad company. (R. 60, 68, 69).

None of the trackage or land upon which any of the tracks were laid, was leased or in anywise controlled by the Oil Company. (R. 23, 30, 31, 60, 69).

The course pursued, with reference to tank cars containing oils and gasoline consigned to the Oil Company at Minneapolis, was substantially as follows:

The cars were brought into the State of Minnesota either over the Chicago Great Western, or some other line and by the latter delivered in the state to the Chicago Great Western. (R. 32). In either event they were switched by the Great Western onto the switch tracks above referred to, in common with cars consigned to other persons or companies. (R. 61, 70). Cars consigned to the Oil Company were marked with its name either on the tanks or on the beam below the tank. (R. 135).

The company's cars were usually set in on the switch tracks between 10 and 11 o'clock in the forenoon. (R. 23). Its

unloading foreman, Danielson, went out each morning and looked over the switch tracks for cars bearing the company's name. (R. 61, 79). Upon finding cars for the company Danielson set down the numbers and initials and took the slip up to the office where the buyer wrote opposite each car number the product contained in each, viz.: kerosene, gasoline, naptha, etc. (R. 79). Danielson then notified Kelly, the receiving clerk, of the arrival of the cars and Kelly immediately notified the deputy oil inspector. (R. 79, 90). Danielson then went back to the cars, broke the seals, opened them up, took note whether they were full or "short", took samples from each and made a gravity test. (R. 62, 70, 79, 139). If not up to invoice specifications and requirements, the railroad company was notified that the car was refused and it was taken away. (R. 26, 75, 76).

If the samples were satisfactory and there was no shortage, Danielson made out a switching slip which he gave to the railroad yard foreman, indicating the cars that were to be switched onto the two unloading tracks and the order in which they were to be placed. (R. 62, 63, 81). In the meantime the inspection was made by the State's representative and comparisons made with the Oil Company's representative. (Rec. 125, 126,134).

The railroad company then made the switch, placing the cars under the unloading pipes running to the company's pumping station. (R. 68, 75).

The oil and gasoline was then pumped into the storage tanks from the cars, through the pumping station direct, and was subsequently drawn off as occasion required, thru pipes running from each storage tank to the warehouse, into tank wagons, barrels and other receptacles. (R. 24).

As a general rule, from a day to two days elapsed between the time the cars arrived on the switch tracks and the time they were switched onto the unloading tracks and unloaded.

(R. 63, 64).

And in practically all instances there was ample time for the deputy oil inspector to take a sample from the car before it was unloaded. (R. 68).

Mr. Nillson, one of the deputy oil inspectors at Minneapolis, stated that with few exceptions he obtained his samples and made his tests before the car was unloaded. (R. 126, 131, 133).

At the St. Paul end, where only four or five cars of gasoline were received each week, a different course prevailed.

The cars were usually switched in by the Chicago Great Western late in the afternoon and the company's St. Paul office notified by 'phone. The following morning a postal card was received at the St. Paul office, from the railroad company, giving the car number and initials. The St. Paul office then 'phoned the Minneapolis office of the arrival and the next day a man was sent over to the St. Paul yard to pump the car into the storage tank, the pumping at that point being done by hand and taking practically a day. (R. 76, 77, 94, 95).

Mr. Payte, one of the deputy oil inspectors at St. Paul, stated that generally he checked the yards every morning that when he found a car for the Oil Company he would make his inspection from a sample in the station or from one taken out of the car. In some instances cars were unloaded before he obtained a sample from them, in which case his test was made from samples obtained from the company's employees. (R. 115-117).

It was stipulated in the agreed statement of facts, that during the period covered by this action *the Oil Company had been duly assessed, under the general personal property tax laws of the state, upon all oils and gasoline owned and possessed by it within the state as of the first of May in each year, and had duly paid said taxes.* (R. 148).

Relative to the fifth defense, involving the efficacy of the

gravity test, as applied to gasoline, the evidence disclosed the following:

In actual practice the specific gravity was ascertained by using a Baume hydrometer, which indicated temperature as well as gravity. While the test should properly be taken at a temperature of 60 degrees, it was possible, by making a certain allowance, to make the test at a different temperature, but not as accurately. (R. 75, 76).

Mr. Frankforter, Dean of the Department of Chemistry at the State University, testified on behalf of the Oil Company that the gravity test, as applied to gasoline, gave only a very relative indication as to its explosive character when mixed with air under normal conditions (R. 40); *that the gravity test did not give any definite information and that the distillation test was the only one that would absolutely indicate what the gasoline was made of* (R. 41); that the witness had made a great many tests, during the course of his work in the University, of samples of gasoline purchased in the open market, and had found a great many of them to be the product of blending, as distinguished from straight-run gasoline (R. 44, 45); *that distillation was the only test that would indicate whether gasoline of a certain gravity was a blend or a straight-run product* (R.45); that the blended product was more dangerous than straight-run because of the presence of very high boiling liquids that would vaporize very readily (R. 44); that some three years prior the witness had gone over the subject with a committee of the state legislature, had made tests for it, *and had stated to the committee that the gravity test was not reliable and that the boiling, or distillation, test was* (R. 48); finally, that the blending might be effected by the refinery not cutting off the distillation soon enough, or by mixing a high gravity gasoline with low-grade kerosene. (R. 48).

Mr. Walker, chemist for the Van Tilburg Oil Co. testified on behalf of the Oil Company that he was familiar with both the gravity and distillation tests; that as applied and confined to

the product commercially known and sold as gasoline in Minnesota, during the period covered by this action, *the gravity test was no indication, of any value, of its quality and that there could be two or three different grades of exactly the same gravity* (R. 50); that originally commercial gasoline was put on the market at a gravity of about 57, but was not very satisfactory and the result was that the producers took to mixing casing head gasoline to increase the gravity (R. 51, 54); that from experience gained in making numerous tests the witness was prepared to state *that the gravity test alone, as applied to gasoline sold for commercial purposes in the state for the past three or four years, would not give any indication whether the gasoline to which the test was applied was a straight-run product, or a blended or adulterated product, and that the distillation test was the only one that would* (R. 51); that the gravity test alone, as applied to the same character of gasoline, i. e., that commercially sold and used in the state for the past few years, *would not give a correct indication of its susceptibility to explosion when mixed with air*, for the reason that gasolines are made and sold which are blended in such way that, although they may show a comparatively low gravity, they give off copious fumes or vapors when exposed to a high temperature, the evaporization being greater in a blended than in a straight-run product (R. 52); that blended gasoline included any gasoline that was produced by mixing casing gasoline with a lower gravity petroleum product (R. 54); that gasoline produced by the refinery not cutting off the distillation at the proper point was not what was meant by blended gasoline in the commercial world; that as applied to straight-run gasoline the gravity test indicated its quality to a considerable extent; that the Van Tilburg Co. did not purchase its gasoline on the gravity test, but sold it both ways, that is, on gravity and dryness (R. 55); that the company usually sold three grades of different gravities, but that they were not sold with reference to their gravities and that the tendency to evaporate would not follow the Baume scale or any other specific gravity

(R. 56); that most of the blended product used by witness's company was blended at the refinery, that it cost less than the straight-run product *and that witness was able to ascertain the exact proportions of the various grades of petroleum products used in making this blend only by using the distillation test and that the information could not be obtained by using the gravity test* (R. 57, 58); that during the past four years commercial gasoline has ranged from 58 to 70 specific gravity, naphtha from 50 to 57, and kerosene from 40 to 50 (R. 58, 59); finally, that referring to gasoline such as had been sold commercially in the state for the past three or four years, the fact that one package of the product was marked 58 specific gravity and another marked 68 to 70, would not give any indication that one was any more hazardous, in common use by the public, than the other. (R. 59).

Mr. Abbott, assistant secretary of the Penn Oil & Supply Co. called on behalf of the State, testified that his company bought in the open market; that the regular grades of gasoline ran from 60 to 68 or 70, the custom being the lighter the gasoline the higher the price; that the specific gravity of the gasoline sold commercially in Minnesota indicates its quality or value in the market and that the higher priced product, that having the highest specific gravity, was the most explosive (R. 107-109).

On cross-examination this witness admitted that the gravity test would not indicate whether the product was blended or not, and that only the distillation test would show that condition; that he wished his testimony, to the effect that the gravity test was an indication of quality, to apply solely to the straight-run product, and not to the blended article; that his statement that the higher the gravity the higher the price, only applied to the straight-run article and that the reverse would be true as to the blended product. (R. 110, 111).

Mr. Bein, vice-president and treasurer of the W. H. Barber Agency, jobbers and brokers of oils, gasoline, kerosenes

and naval stores, testified on behalf of the State that the same kind of crude gasoline, the higher the gravity the higher the price; that the refinery sells it partly on the gravity grade, but that when his company sold 68-70 gasoline, it took into consideration where it came from; that the blended product sold on its specific gravity and also on its end point, or distillation test; finally that the blended was much cheaper than the straight-run, the 68 blended selling, the previous summer, at the same price as the 60 straight-run. (R. 113, 114).

On cross-examination *this witness admitted that the distillation test was the most important thing.* (R. 114).

Other pertinent facts, contained in the agreed statement, will receive attention hereafter in the argument.

At the close of the testimony the trial court indicated that it was bound by the recent decision of the Supreme Court of Minnesota in the Bartles Oil Co. case, 132 Minn. 138, 155 N. W. 1035 (R. 145), and thereafter filed its findings in which it found, as conclusions of law, that the test provided by law for gasoline was a proper and legitimate exercise of the police power of the state, that the commodities in question were not in interstate commerce, either when inspected or when held subject to inspection, and, finally, that the charges imposed for such inspection were not excessive. (R. 157, 158).

Thereupon a case was settled and the Oil Company moved for amended, substituted and additional findings and for an order granting a new trial (R. 158-163). Both motions were denied (R. 164, 165), and judgment entered against the company in the sum of $10,157.46. (R. 166, 167).

The case was then taken to the Supreme Court of the State of Minnesota, the court of last resort in the State, on appeal from the judgment thus entered; the Oil Company assigning as error, among other things, the findings and conclusions of the trial court hereinbefore mentioned and the

denial by the trial court of its motion for amended substituted and additional findings and for a new trial. (R. 173-178).

The Supreme Court of the State of Minnesota, on July 14th, 1916, filed its opinion affirming the judgment; its transcript of judgment being entered and docketed in said court on July 25th, 1916. (R. 178-182). In its opinion the State Supreme Court held in effect that the "original package" test, for determining when an article ceased to be a subject of interstate commerce, was not applicable to the case presented; that the commodities involved were not the subjects of interstate commerce, either when inspected or when held subject to inspection; that the charges prescribed and provided for by the inspection act were not so excessive, unreasonable and disproportionate as to warrant holding the act unconstitutional either under the Federal or State constitution; and, finally, that the act constituted a valid exercise of the police power of the State. (R. 178-181).

From the final judgment of the Supreme Court of Minnesota, rendered and entered as aforesaid, the Oil Company, Plaintiff in Error herein, brings the case on error to this Court and assigns the following errors in the judgment and decision of the Supreme Court of the State of Minnesota.

ASSIGNMENT OF ERRORS.

1. The Supreme Court of the State of Minnesota erred in holding and deciding that illuminating oil, gasoline, or other products of petroleum, when shipped into the State of Minnesota from other states, in tank cars in usual form, consigned to Plaintiff in Error in said State of Minnesota, did not constitute "original packages," prior to the removal of any of the contents thereof from said tank cars.

2. The Supreme Court of the State of Minnesota erred in holding and deciding that the "original package" test for determining when an article ceases to be a subject of inter-

state commerce, was not applicable to the case at bar.

3. The Supreme Court of the State of Minnesota erred in holding and deciding, that at the time inspection was required to be made, under Chapter 502 of the Laws of the State of Minnesota for the year 1909, approved April 24, 1909 entitled "An Act relating to the inspection of petroleum products, the appointment of chief inspector of oils and deputy inspectors, manner of inspection, establishing fees for inspection and salaries of inspectors, prohibiting the sale of adulterated oils, and providing penalties for violation thereof," (Chapter 20, General Statutes of Minnesota, 1913) the commodity subject to inspection thereunder was not then the subject of interstate commerce and that said Inspection Act did not operate upon it as such.

4. The Supreme Court of the State of Minnesota erred in holding and deciding that the oil and gasoline, though still in the tank cars waiting to be unloaded, was property brought to rest in the State of Minnesota, and for which the protection of the State was necessary.

5. The Supreme Court of the State of Minnesota erred in holding and deciding that the charge or tax imposed by said Chapter 502 of the Laws of Minnesota for the year 1909, was valid, and that said charge or tax, and said Act, were not in conflict with the Constitution of the United States as being repugnant to, and violative of, the third clause of Section 8, Article I of the Constitution of the United States, in that the charges or taxes prescribed by said Chapter 502 of the Laws of Minnesota for the year 1909, interfered with the freedom of commerce among the several states, and the exclusive power of Congress over the same.

6. The Supreme Court of the State of Minnesota erred in holding and deciding that the charge or tax imposed by said Chapter 502 of the Laws of Minnesota for the year 1909, was valid, and that said charge or tax, and said Act, were

not in conflict with the Constitution of the United States as being repugnant to, and violative of, the second clause of Section 10, Article I of the Constitution of the United States, in that said charges or taxes so imposed and prescribed by said Chapter 502 of the Laws of Minnesota for the year 1909 were used for purposes other than the execution of said Inspection Act and that said charges or taxes were far in excess of what is needed or absolutely necessary for the execution of said Inspection Act.

7. The Supreme Court of the State of Minnesota erred in holding and deciding that the charge or tax imposed by said Chapter 502 of the Laws of Minnesota for the year 1909, was valid, and that said charge or tax, and said Act, was not in conflict with the Constitution of the United States as being repugnant to, and violative of, the 14th Amendment of the Constitution of the United States, in that it deprived Plaintiff in Error herein of its property without due process of Law.

8. The Supreme Court of the State of Minnesota erred in holding and deciding that said Chapter 502 of the Laws of Minnesota, for the year 1909, is a valid and legal exercise of the police power of the State of Minnesota.

9. The Supreme Court of the State of Minnesota erred in affirming the judgment theretofore rendered and docketed in said cause in favor of Defendant in Error herein, and against Plaintiff in Error herein.

10. The Supreme Court of the State of Minnesota erred in not reversing the judgment heretofore rendered and docketed in favor of Defendant in Error herein and against Plaintiff in Error herein and in not ordering and decreeing judgment in favor of Plaintiff in Error herein and against Defendant in Error herein.

PREFACE TO ARGUMENT.

It may be of purpose to note the situation at the time this case was tried in the lower court, and argued before the State Supreme Court.

This State had previously instituted and tried a similar case against the Bartles Oil Company, resulting in a decision in favor of the State in the lower court and an affirmance by the State Supreme Court, 132 Minn. 138, 155 N. W. 1035; the final decision having been rendered about two weeks before the case at bar came on for trial in the District Court of Ramsey County.

In passing upon the Bartles Case the Minnesota Court held:

First. That as applied to gasoline, an inspection consisting solely of a gravity test, followed by branding the ultimate receptacle with the words "Gasoline, unsafe for illuminating purposes," and indicating the gravity, was a proper exercise of the police power of the State, and not in contravention of the Federal Constitution. (This was in reality a moot question as this issue was not presented by the pleadings in that case, or in anywise adverted to on the trial in the lower court).

Second. That oil tank cars, of the character in common use in transporting that product, did not constitute "original packages."

Third. That the storage tanks of the Bartles Company were on private property leased or owned and, to quote, "the cars are switched *there* and unloaded. The railroad makes and the defendant accepts delivery there."

Fourth. That the inspection in question was not an inspection of property that was at the time the subject of interstate commerce.

Fifth. That if mistaken in the respect last indicated, the

act in question nevertheless was valid, for the reason that the charge or fee was reasonable and did not unduly burden interstate commerce.

With this situation confronting it Plaintiff in Error, on the trial of its case in the lower court, endeavored to bring out clearly the relative location and ownership of its property on the one hand, and that of the yards and tracks of the railroad company on the other, and in addition, in detail, the modus operandi as affecting the question of delivery by the railroad and acceptance and receipt by the Oil Company; in all of which respects the record on appeal in the Bartles Case was seriously deficient and lacking. In addition, the efficacy and sufficiency of the gravity test, as applied to gasoline, to support a valid exercise of the police power, was squarely questioned by the pleadings and strenuously contested at the trial.

ARGUMENT.

ASSIGNMENTS 1 TO 6.

For the sake of brevity these several assignments, involving similar considerations, may be considered together.

I.

THE TANK CARS AND CONTENTS, PRIOR TO UNLOADING, CONSTITUTED "ORIGINAL PACKAGES."

In State vs. Bartles Oil Co., 132 Minn. 138, 155 N. W. 1035, the Minnesota Supreme Court made the following statement, to which it adhered in its opinion in the case at bar (Rec. 180), viz:

> "Oil products are shipped to it from the oil-producing states in tank cars and are stored in its stor-

age tanks. They are not 'original package' shipments;" citing Savage v. Jones, 225 U. S. 501.

If the word "they" refered to tank cars as its antecedent, as it evidently did, we fail to find any authority, either in reason or precedent, for any such statement.

In McGregor v. Cone, 104 Iowa, 465; 73 N. W. 1041, the court said:

> "The question then arises, what is an 'original package'? The definition commonly accepted, and believed by us to be correct, is that 'it is a bundle put up for transportation or commercial handling, and usually consists of a number of things bound together, convenient for handling and conveyance.' See State v. Board of Assessors (La.) 15 South. 10; Keith v. State (Ala.) 8 South. 353; U. S. v. One Hundred and Thirty-Two Packages, 22 C. C. A. 228, 76 Fed. 364. In the case of State v. Winters (Kan. Sup.) 25 Pac. 237, it is said: 'The original package was and is the package as it existed at the time of its transportation from one state to another.' It is quite apparent, we think, that the words 'original package' have reference to the unit which the carrier receives, transports, and delivers as an article of commerce. The importer decides for himself the size of the package which he desires to import, and when he delivers it to the carrier for transportation he gives it in the initial step, and from that time until sold in that form, or broken and transformed, it is the subject of interstate commerce. But when sold or broken, or when it changes form, it ceases to be an article of interstate commerce, and no longer enjoys this protection. *The original package, then, is that package which is delivered by the importer to the carrier at the initial point of shipment, in the exact condition in which it was shipped.* If sold, it must be in the

form as shipped or received; for, if the package be broken after such delivery, it, by that act alone, becomes a part of the common mass of property within the state, and is subject to the laws of that state passed in virtue of its police power." (Italics ours.)

In Commonwealth v. Schollenberger, 156 Penn. St. 201, (cited in the majority opinion in Austin v. Tennessee, infra,) the court said:

"An 'original package' is such form and size of package as is used by producers and shippers *for the purpose of securing both convenience in handling and security in transportation of merchandise in the ordinary course of actual commerce.*" (Italics ours.)

In State v. Maine, 66 Wash. 591, 39 L. R. A. (n. s.) 1051 involving interstate shipment of liquor, the court said:

"Applying the reasoning and principle of these various decisions to the question submitted, the answer is readily determined, *and it must be held that an unbroken package is the package in the original form in which it was made by the shipper for shipment and delivery into a dry unit, providing the receptacle used is one ordinarily used by honest dealers in the same business, and is recognized commercially as such a receptacle.*" (Italics ours.)

In Austin v. State, 101 Tenn. 563; 50 L. R. A. 478, the court said:

"Speaking generally.....an original package, as applied to interstate and international commerce, is a package, bundle, or aggregation of goods put up in whatever form, covering, or receptacle for transportation, and as a unit transported from one state or nation to another."

In affirming Austin v. State this Court, 179 U. S. 343, discussed the "original package" proposition exhaustively; in both the majority and dissenting opinions.

We quote from the majority opinion:

"The whole law upon the subject of original packages is based upon a decision of this court, in Brown v. Maryland, 12 Wheat. 419.".....

"In delivering the opinion of the court, Mr. Chief Justice Marshall observed: 'It is sufficient for the present to say, generally, that when the importer has so acted upon the thing imported, that it has become incorporated and mixed up with the mass of property in the country, it has perhaps lost its distinctive character as an import, and has become subject to the taxing power of the State; but while remaining the property of the importer, in his warehouse, *in the original form or package in which it was imported*, a tax upon it is too plainly a duty on imports to escape the prohibition in the Constitution.' This sentence contains in a nutshell the whole doctrine upon the subject of original packages, upon which so formidable a structure has been attempted to be erected in subsequent cases. Whether the decision would have been the same if the original packages in that case, instead of being bales of dry goods or hogsheads, barrels or tierces of liquors, had been so minute in size as to permit of their sale directly to consumers, may admit of considerable doubt. Obviously the doctrine of the case is directly applicable only to those large packages in which from time immemorial it has been customary to import goods from foreign countries." Pages 350-351.) (Italics ours.)

.....

"The real question in this case is whether the size of the package in which the importation is actually made is to govern; or, *the size of the package in which bona-fide transactions are carried on between the manufacturer and the wholesale dealer residing in different States.*

We hold to the latter view. The whole theory of the exemption of the original package from the operation of state laws is based upon the idea *that the property is imported in the ordinary form in which, from time to time immemorial, foreign goods have been brought into the country.* These have gone at once into the hands of the wholesale dealers, who have been in the habit of breaking the packages and distributing their contents among the several retail dealers throughout the State. It was with reference to this method of doing business that the doctrine of the exemption of the original package grew up. But taking the words 'original package' in their literal sense, a number of so-called original package manufactories have been started through the country, whose business it is to manufacture goods for the express purpose of sending their products into other States in minute packages, that may at once go into the hands of the retail dealers and consumers, and thus bid defiance to the laws of the State against their importation and sale. In all the cases which have heretofore arisen in this court the packages were of such size as to exclude the idea that they were to go directly into the hands of the consumer, or be used to evade the police regulations of the State with regard to the particular article." (P. 350:) (Italics ours.)

. . . . . .

"The question is not in what packages the law requires the cigarettes to be packed for the purpose of taxation, *but what are the packages in which they are usually transported from one State to another where the transaction is bona fide and for the legitimate purposes of trade and commerce.* (*Page 363*) (Italics ours.)

To quote further from this case would unduly extend

this brief on this phase, but both the majority and dissenting opinions contain exhaustive discussions on this subject.

Possibly we may be in error, but it would seem that the language and reasoning used and adopted in the foregoing cases admitted of no other conclusion than that the tank car form of shipment constituted an original package.

Moreover, it generally has been held that opening the original package for the mere purpose of inspection or testing, did not destroy its character as an original package and thereby incorporate it into the general mass of property of the State.

Inc'chen v. City, 65 So. 710 (Ala.);
Wind v. Iler, 93 Iowa 316; 61 N. W. 1001;
Sponge Co. v. Drug Co., 124 Wis. 649; 102 N. W. 888;
U. S. v. Asafoetida, 181 Fed. 561.

II.

THE OIL INSPECTION ACT CONTEMPLATED INSPECTION OF CONTENTS OF TANK CARS BEFORE SAME WERE UNLOADED AND AS A CONDITION PRECEDENT THERETO, AND THE RECORD IN THIS CASE DEMONSTRATES SUCH INSPECTION TO HAVE BEEN ABSOLUTELY FEASIBLE AND POSSIBLE.

The Oil Inspection Act under consideration (Sections 3619-3632, Gen. Stat. Minn. 1913), contained, among other, the following provisions:

> 3622. INFERIOR OILS--TESTS--CERTIFICATE—
>
> No person shall sell, or offer for sale or use for illuminating purposes, any coal oil, or product thereof un-

less the same has been inspected and branded as provided by this act; nor any that will ignite at a temperature below one hundred and twenty degrees Fahrenheit. The instrument to be used in making tests shall be the "Tagliabue Open Cup;" and the gravity of said oils shall be determined by the "Tagliabue Standard Registered Hydrometer Beaume Scale" at a temperature of sixty degrees Fahrenheit, and said gravity shall be stenciled on each barrel or package containing said oil. There shall be printed or stenciled on each tank wagon sale ticket covering delivery of oil the following:

"This is to certify that the oil covered by this sale has a gravity test of.....and a fire test of not less than 120 degrees and has been inspected and approved by the state oil inspector."

(Name of oil concern to be inserted here)

Every person or corporation selling or delivering oil in bulk by means of portable tanks, shall, in lieu of the stamp or brand herein provided for, furnish and deliver to the purchaser a certificate as above set forth. ('09 c. 502 §4.)

3623. INSPECTION AND BRANDING—The inspector or one of his deputies, shall test the quality of all illuminating oils made, offered for sale or sold in this state, using for that purpose such instruments as are prescribed in section 4 (3622). If found to answer the requirements of this act, he shall affix to the receptacle containing the same his brand showing the date of his inspection, his name and the words "approved, gravity test....degrees." Otherwise he shall in like manner brand the same "unsafe for illuminat-

ing purposes." He shall give to the person in possession of such oil a certificate of inspection, reciting the package, number of gallons, result of fire test and gravity test and the date of inspection. ('09 c. 502 §5.)

3625. GASOLINE—TESTS—CERTIFICATE—For the purposes of this act, gasoline shall be deemed to be subject to the same inspection and control as provided for in this act for illuminating oils, except that the inspectors are not required to test it other than to ascertain its gravity; and it shall be unlawful for any person, dealer or vendor to sell or offer for sale, any petroleum products known as gasoline that has not been so inspected and approved. All gasoline shall be tested as to gravity in the same manner as oil and shall be branded "Unsafe for illuminating purposes," and every barrel, cask or package which contains gasoline shall be labeled or branded with the word "Gasoline" in large red letters at least two inches in size, and the gravity thereof shall be stenciled on each barrel or package. Provided, however, that any person or corporation selling or delivering gasoline in bulk by tanks shall, in lieu of the stamp or brand herein provided for, print or stencil on each tank wagon sale ticket covering deliveries of gasoline the following:

"This is to certify that the gasoline covered by this sale has a gravity test of .....and has been inspected and approved by the state oil inspector."

(Name of oil concern inserted here)

('09 c. 502 §7.)

3627. SALE OF ADULTERATED OILS OR GASOLINE—ANALYSIS—The sale of any adulterated illuminating oils or gasoline is hereby forbidden and prohibited and any oils that present a yellowish or dark color or dirty appearance to the eye, may be rejected and disapproved for illuminating purposes by the said chief inspector of oils or his deputies without further test. And such discoloration shall be prima facie evidence that such oils are not such a product as is properly subject to sale for illuminating purposes within this state. The chief inspector of oils and his deputies are not required in every case to make a complete analysis of the oils inspected to ascertain every form of impurities such as sulphur, tar-like matter, but whenever in the opinion of the chief inspector of oils or his deputies it is necessary that any of the oils provided for in this section shall be more thoroughly analyzed, it shall be their duty to procure a sample of such oil and forward same to the chemists of the state dairy and food department for the purpose of a more detailed analysis to determine in what particular the impurities or imperfections exist. And if upon such analysis, it is demonstrated that some other impurities or imperfections exist in said oil, not in this act specified, which would render such oil in any way unfit for illuminating purposes, it shall be his duty (to) reject such oil for such purposes. It shall be the duty of such chemist to make such analysis without delay and return such sample of oil at the earliest practicable moment to the chief inspector from whom it was received, together with his official analysis of the same. ('09 c. 502 §9.)

3628. OIL OR GASOLINE IN TANKS—INSPECTION BEFORE UNLOADING—Oil or gasoline shipped in tanks or tank cars shall not be unloaded until it is duly inspected, providing such inspection is made within twenty-four hours, after the arrival and notice setting forth the number of the car and date of its arrival has been given the inspector. Each fifty-five gallons or major fraction thereof shall be considered a barrel in computing the inspection fees. No further inspection shall be necessary, and, if such oil be afterwards placed in barrels, the inspectors shall brand without extra charge one such barrel for each fifty-five gallons thereof. ('09 c. 502 §10).

3630. FEES—The fees for inspecting and branding shall be as follows:

1. For a single barrel or other receptacle containing not more than fifty-five gallons, forty cents.

2. If more than one and not more than ten such receptacles be inspected at one time and place, twenty-five cents for each.

3. If more than ten, fifteen cents for each additional barrel or receptacle, except as hereinafter provided.

4. Oil or gasoline in tanks or tank cars containing more than fifty barrels, ten cents per barrel.

If the quantity in any one receptacle exceeds one barrel, excepting where the same is in tanks or tank cars containing fifty barrels or more, ten cents shall be charged for each fifty-five gallons thereof. Such fees shall be payable at the time of the inspection: Provided, that when oil is shipped outside of the state after inspection fees have been paid, the firm shipping same shall be given credit by the inspector for

such fees. And provided, further, that all kerosene oil and gasoline inspected in other states, where the inspection requirements are as high as those required herein may be admitted without additional inspection on payment of the fees required by this act. ('09 c. 502 §12.)

3631. FEES, HOW COLLECTED—REPORT —ANNUAL APPROPRIATION — EXPENSES— It shall be the duty of the inspector on or before the tenth day of each month to certify to the state auditor the money due from any corporation, firm or individual as inspection fees, and it is hereby made the duty of the state auditor to collect such fees and pay them into the state treasury. At the end of each fiscal year the inspector shall make an annual report to the governor. All moneys collected hereunder shall be credited to the "Oil Inspection Fund." For the payment of salaries of the state inspector, his deputies and office force, and the expenses provided for in this chapter, the sum of forty thousand dollars, or so much thereof as may be necessary, is hereby annually appropriated out of the oil inspection fund herein provided for. On or before the fifteenth day of each month the inspector shall certify to the state auditor the amount due to each of his deputies as compensation and mileage for the preceding month, also the items and amounts of all expenses necessarily incurred by him in the performance of his duties, including the cost of blanks, stationary, postage, travel and instruments furnished for testing and branding oils, and such salaries, mileage and expenses being duly audited shall be paid by the state. ('09 c. 502 §13.)

3632. VIOLATION A MISDEMEANOR—Any person, firm, or corporation wilfully violating any of the terms of this act is hereby declared guilty of a misdemeanor. ('09 c. 502 §14.)

The requirement contained in section 3628,—to the effect that oil or gasoline shipped in tank cars should not be unloaded until duly inspected, provided such inspection was made within twenty-four hours after arrival and notice thereof to the inspector,—first appeared in the oil inspection laws of the state in the enactment of Chap. 246, Laws Minnesota 1889, which provided that:

> "The inspector of illuminating oils and his deputies may inspect and test illuminating oils, in a tank railroad car, so-called, standing on a railroad track, and such oil shall not be transferred into warehouse or storage tanks, or unloaded, until so inspected."

This provision obtained until the passage of Chap. 20, Laws Minnesota 1893, when it was supplemented by a clause providing that if any such oils were not inspected within twenty-four hours after arriving at their destination they might be unloaded, and inspected after unloading.

This provision continued until the enactment of Chap. 502, Laws Minnesota 1909, when it was again supplemented by making the twenty-four hour period date also from the giving of the notice of arrival to the inspector.

In Willis v. Standard Oil Co., 50 Minn., 290, the court held that the clause contained in Chap. 246, Laws Minnesota 1889, to the effect that "such oil shall not be transferred into warehouse or storage tanks, or unloaded, until so inspected," was as emphatic an expression of legislative intent that the oil was to be inspected in the railroad tank as though the law had expressly attached a penalty to such forbidden transferring or unloading; and that the owner could

not be permitted to gain anything by removal contrary to the *prohibition* of the statute.

At the time of the decision in the Willis case, in 1892, it was well known and generally recognized that practically all of the illuminating oil and gasoline coming into the several states was shipped in, in large tank cars, "holding each as much as one hundred barrels," and subsequently unloaded into stationary storage tanks "holding as much as 2,000 barrels each." Moreover, the record in this case shows, what is also a matter of common knowledge, viz.: that to meet the necessities resulting from an ever increasing demand, the tank cars and storage tanks in use for a number of years past have largely increased in size and capacity.

Under the foregoing provisions of Sections 3622 and 3623, all oil showing a fire test of less than 120° was to be rejected, and could not be sold, offered for sale, or used for illuminating purposes. In view of the purpose and intent of the inspection law, at least as evidenced by its provisions, it is clear that the requirement that inspection of the contents of tank cars should be had before unloading,—providing the same could be accomplished without subjecting the consignee to unreasonable delay,—was most salutary, and one that in fact afforded the only practical method of safeguarding the public from the danger incident to using illuminating oil below a fire test that had been found to be safe and proper.

Section 3627 provided, among other things, that any oils or gasoline presenting a yellowish or dark color, or dirty appearance to the eye, might be rejected and disapproved for illuminating purposes by the chief inspector or his deputies, without further test, and that such discoloration should be prima facie evidence that such oils were not such product as was properly subject to sale for illuminating purposes within the state.

It is evident that this provision would be of no practical force, and practically a dead-letter, unless inspection could be had before the tank car was unloaded, as while the oil in a given car might fall within the classification authorized to be rejected, the product resulting from mingling and mixing this in a storage tank with oil from several other cars, might not give any evidence or show any trace of the objectionable features.

It must be evident that it would be absolutely impracticable for an oil company to at all times have in readiness an empty storage tank for each tank car that arrived, in order that the contents of the car, when pumped into said storage tank, would be separate and distinct from the contents of other cars. It is shown that these storage tanks are built to hold from eight to twelve tank cars of oil or gasoline each, as the case may be, and that as a general proposition the oil or gasoline is pumped from a tank car into a storage tank that at the time contains more or less quantity of similar product. Now if the inspection of illuminating oil, involving the ascertainment of its fire test, is not made before unloading, but is delayed until the contents of that particular car have become commingled in the storage tank with the contents of other cars, it would not only be impossible to determine whether the illuminating oil that came in the particular car in question, taken by itself, would have come up to the requirements of the act, but the subsequent branding of the barrel or other receptacle, into which the product was drawn from the storage tanks, would, for all practical purposes, be an empty ceremony.

To illustrate: Assume that the contents of a tank car of kerosene, having a gravity of 45 to 50, had been pumped, prior to inspection, into a storage tank containing the contents of eight or ten cars of gasoline of a gravity of 68-70. As is conclusively shown by the record in this case, a sample subsequently drawn from that storage tank and subjected to the

gravity test would not disclose the presence of the kerosene; the mixing or blending simply resulting, so far as the test would indicate, in reducing the gravity of the original contents a degree or so. The same condition would result from unloading a non-inspected car of yellowish or dirty kerosene into a storage tank already containing the contents of a number of cars of good quality oil, or unloading a non-inspected carload of benzine or naptha into a storage tank containing gasoline; in each and all of which cases the test of a sample afterwards drawn from the storage tank would absolutely fail to give an indication or evidence of the character of the contents of the non-inspected car.

In view of these self-evident and well known conditions it must be assumed that at the time of the passage of the act of 1909,some seventeen years after the decision in the Willis case, it was evident to the legislature that inspection at any time subsequent to unloadnig would subserve no beneficial or practical purpose whatsoever. Further, that the legislature was not only fully cognizant of the situation and of the futility of inspection at any time subsequent to unloading, but also that the twenty-four hour proviso was retained simply to cover exceptional cases, and in such cases to relieve the dealer from the penalty that he would otherwise be subjected to under Section 3632, making a violation of any of the terms of the act a misdemeanor.

This conclusion is strengthened by the fact that while the proviso in the Revised Laws, Minnesota 1905, was limited to twenty-four hours after *arrival* of the car, the act of 1909 started the running of the twenty-four hour period from the time *notice was given the inspector;* thus exonerating the dealer and placing the responsibility for due inspection upon the agents of the state.

It appears from the record that compliance by the inspectors with the requirement of the act, in the respect in-

dicated, was practically at all times possible and feasible.

Mr. Nillson, one of the deputy inspectors at Minneapolis testified that he visited appellant's plant on his regular rounds daily (Rec. 125) and that inspection was made in most instances before unloading. (Rec. 126.)

The fact that Mr. Payte, inspector at St. Paul, did not pursue a similar course, was due solely and entirely to his own negligence, as he testified that he went through the yards nearly every morning (Rec. 315), and the *undisputed testimony* of appellant's witnesses Balkan and John Hancock showed that the tank cars at the St. Paul end invariably stood at the plant a whole day *before* unloading was commenced and that it took nearly a day to pump out a car (Rec. 76, 77, 94, 95). Consequently there was no valid reason why Payte could not have followed the same course as that pursued by Nillson at the Minneapolis yards.

From the foregoing we think it conclusively appears that there is no valid reason for applying any other or different rule of construction to the requirements contained in the act of 1909 than that accorded Chap. 246, Laws Minnesota, 1889, for the reason that the record in this case clearly shows that, save in instances so rare as to be negligible, it was not only always possible and feasible to inspect before unloading but that such inspection was in fact so made; for the further reason that the act, taken as a whole, plainly contemplates and demands inspection before unloading; and for the additional reason that conditions so long prevailing and existing in the oil trade as to be matters of common knowledge, would make inspection at any subsequent time nothing less than farcial and render the act beyond question what, in the opinion of a fair sized majority, it at present merely is, viz: a vehicle for supplying "pork" to the "faithful."

We are not unmindful of the fact that in the opinion rendered by the Minnesota Supreme Court it was stated that

the court would "therefore treat the act under consideration as contemplating inspection in the original tank cars before they are unloaded, at least wherever it is possible, and the evidence in this case is that the inspection was usually, though not in all instances, so made."

We have nevertheless gone to some length on this point for the reason that if the Minnesota Supreme Court, in making the concession in question, was evidently proceeding along the line of least resistance, being actuated by the assumed immateriality of the question in view of its other conclusions, we desire to demonstrate that the position assumed by it, in the respect indicated, was fully justified by a fair and logical construction of the provisions of the act under consideration.

III.

AT THE TIME INSPECTION WAS REQUIRED TO BE MADE, THE COMMODITY INSPECTED WAS THE SUBJECT OF INTERSTATE COMMERCE AND THE INSPECTION ACT OPERATED UPON IT AS SUCH.

But the Supreme Court of Minnesota contends that the inspection act, even though requiring inspection prior to unloading, did not operate upon a commodity then in interstate commerce, but upon a commodity that had come to rest within the State, had "become incorporated into the general mass of the property of the State," and "for which the protection of the State was necessary;" basing its holding, both in the Bartles Case and the case at bar, upon its construction and interpretation of the cases of General Oil Co. v. Crain, 209 U. S. 211; Susquehanna Coal Co. v. Mayor & Council of South Amboy, 228 U. S. 665; Bacon v. Illinois, 227 U. S. 504; American Steel & Wire Co. v. Speed, 192 U. S. 500; and C. M. &

St. P. R. Co. v. Iowa, 234 U. S. 334, and their assumed applicability to the facts presented and established in the instant case.

In view of the conflict between the Supreme Courts of Minnesota (Rec. 178-181) and Washington (162 Pac. 558), on the one hand, and those of the States of North Dakota (150 N. W. 576), Ohio (91 Ohio St. 296), and Nebraska (161 N. W. 537), on the other, with respect to the apparent divergence between the views expressed by *this* court in the case of General Oil Co. v. Crain, Supra, and that of Foote v. Maryland, 232 U. S. 494, a review of these cases is in order.

The Crain Case was decided upon the principles announced in the American Steel & Wire Co. Case, and the decision in the latter case, in turn, was based upon the cases of Woodruff v. Parham, 8 Wall. 123, and Brown v. Houston, 114 U. S. 622.

Woodruff v. Parham, Supra, decided in 1868, involved a simple *tax* on sales of merchandise, *imposed alike upon all sales made in Mobile, Alabama*, whether made by a citizen of that or another State, or whether the goods sold were the product of that State, or some other.

It appeared that Woodruff and others, auctioneers, received in the course of their business for themselves, or as consignees and agents for others, large amounts of goods and merchandise, the product of states other than Alabama, and sold the same in Mobile to purchasers in the original unbroken packages.

Thereupon, the tax collector for the city demanded the tax levied by the ordinance, which Woodruff refused to pay, asserting that it was repugnant to the provisions of the Constitution of the United States regulating commerce with foreign nations, etc., and prohibiting the levy of any imposts or duties on imports or exports. The Supreme Court of Alabama sustained the tax.

The case having come before this court, on Writ of Error, the precise question was thus stated, after reference to Brown v. Maryland:

> "That decision has been recognized for over forty years as governing the action of this court in the same class of cases, and its reasoning has been often cited and received with approbation in others to which it was applicable. We do not now propose to question its authority or to depart from its principles.
>
> "The tax of the State of Maryland, which was the subject of controversy in that case, was limited by its terms to importers of foreign articles or commodities, and the proposition that we are now to consider is whether the provision of the Constitution to which we have referred extends, in its true meaning and intent to articles brought from one State of the Union into another." (pp. 130-131.)

After a discussion of the principles involved, this court said:

> "Whether we look, then, to the terms of the clause of the Constitution in question, or to its relation to the other parts of that instrument, or to the history of its formation and adoption, or to the comments of the eminent men who took part in those transactions, we are forced to the conclusion that no intention existed to prohibit, by this clause, the right of one State *to tax* articles brought into it from another. If we examine for a moment the results of an opposite doctrine, we shall be well satisfied with the wisdom of the Constitution as thus construed." (pp. 136-137.) (Italics ours).

It will be observed that in this case *involving a tax*, the goods had entered the state, had become part and parcel of the general property of a citizen thereof, *and were ready for sale, without*

the requirement of any condition precedent to sale; the same as any other merchandise within the state.

Next came Brown v. Houston, 114 U. S. 622, decided in 1885. In this case suit was instituted by Brown and another in the state court of Louisiana, to enjoin Houston, State tax collector, from seizing and selling a certain lot of coal belonging to plaintiffs, to satisfy a *tax* levied thereon in the parish of Orleans, for the year 1880.

The coal in question had been mined in Pennsylvania, shipped from there into the state of Louisiana as the property of plaintiffs, and at the time of the petition was, and always had remained, in its original condition, and never had been or become mixed or incorporated with other property in the state of Louisiana. When said assessment was made the coal was afloat in the Mississippi river, in the parish of Orleans, in the boats in which it had been shipped, and in the original condition in which it had gone out of the state of Pennsylvania, and Brown and his partner had notified the board of assessors of the parish that the coal belonged to plaintiffs and was held as above stated and was not subject to taxation. Plaintiffs claimed that the attempt *to collect the tax* in question was contrary to the commerce, and imposts and duties, clauses of the United States Constitution.

In rendering its opinion this court held, among other things:

First: That, following Woodruff v. Parham, supra, the term "imports,"—as used in that clause of the Constitution which declares that "no State shall, without the consent of Congress, lay any imposts or duties on imports or exports,"—does not refer to articles carried from one State into another, but only to articles imported from foreign countries into the United States.

Second: That so long as Congress does not pass any law to regulate commerce among the several States, it thereby in-

dicates its will that commerce shall be free and untrammeled, and any regulation of the subject by the states is repugnant to such freedom; that "in short, it may be laid down as the settled doctrine of this court, at this day, that a State can no more regulate or impede commerce among the several States than it can regulate or impede commerce with foreign nations."

Relative to the precise tax under consideration the court said: on page 632:

> "It was imposed after the coal had arrived at its destination and *was put up for sale*. The coal had come to its place of rest, for final disposal or use, and was a commodity in the market of New Orleans. It might continue in that condition for a year or two years, or only for a day. It had become a part of the general mass of property in the State, *and as such it was taxed for the current year as all other property in the city of New Orleans was taxed*.....
>
> "The taxing of the goods coming from other States as such, or by reason of their so coming, would be a discriminating tax against them as imports, and would be a regulation of interstate commerce, inconsistent with that perfect freedom of trade which Congress has seen fit should remain undisturbed. But if their arrival within the State,—that being their place of destination for use or trade,—if, after this, they are subjected *to a general tax laid alike on all property within the city*, we fail to see how such a taxing can be deemed a regulation of commerce which would have the objectionable effect referred to. (Page 633.) (Italics ours.)
>
> "We do not mean to say that if a tax-collector should be stationed at every ferry and railroad depot in the City of New York, charged with the duty of collecting a tax on every wagon-load, or carload of produce

and merchandise brought into the city, that it would not be a regulation of, and restraint upon interstate commerce, so far as the tax should be imposed on articles brought from other States. We think it would be, and that it would be an encroachment upon the exclusive powers of Congress. It would be very different from the tax laid on auction sales of all property indiscriminately, as in the case of Woodruff v. Parham, which had no relation to the movement of goods from one State to another. It would be very different from a tax laid, as in the present case, on property which had reached its destination, *and had become part of the general mass of property of the city, and which was only taxed as a part of that general mass in common with all other property in the city, and in precisely the same manner.*" (Page 634.) (Italics ours.)

In Brown v. Houston, as in Woodruff v. Parham, no question was presented as to the effect of a law *prescribing and requiring the performance of certain acts as a condition precedent to the right to sell.*

Leisy v. Hardin, 135 U. S. 100, decided in 1889, involved a state statute *prohibiting sales* of the commodity in question. Leisy & Company operated a brewery in Peoria, Illinois, and one of the firm owned certain premises in Keokuk, Iowa, which were occupied by a relative. On a certain day Leisy & Co. shipped from Peoria a number of one-quarter barrels and one-eighth barrels and sealed cases of beer to the relative at Keokuk, Iowa, who acted as agent for Leisy & Co. and who sold and offered the beer for sale at Keokuk, in the original packages only. Shortly after the arrival of the beer at Keokuk, defendant Hardin, as constable, under a search warrant issued by a Justice of the Peace, seized the property and took the same into custody, claiming that it was kept on the premises for the purpose of being sold, in violation of the provisions of the laws of Iowa.

Leisy & Co. brought an action in replevin against Hardin in the state court, resulting in a decision in favor of plaintiffs. This was reversed by the Supreme Court of the State of Iowa in a decision holding that the State Statutes in question were valid, and accompanied by a certificate to the effect that there was drawn in question the validity of certain Statutes of the States of Iowa, on the ground of their claimed repugnancy to Section 8 of Article I of the Constitution of the United States.

In reversing the decision of the State Supreme Court, Mr. Chief Justice Fuller said, in part:

> "In Brown v. Maryland (supra) the act of the state legislature drawn in question was held invalid as repugnant to the prohibition of the Constitution upon the States to lay any impost or duty upon imports or exports, *and to the clause granting the power to regulate commerce;* and it was laid down by the great magistrate who presided over this court for more than a third of a century, that the point of time when the prohibition ceases *and the power of the State to tax commences,* is not the instant when the article enters the country, *but when the importer has so acted upon it that it has become incorporated and mixed up with the mass of property in the country, which happens when the original package is no longer such in his hands;* that the distinction is obvious between a tax which intercepts the imports as an import on its way to become incorporated with the general mass of property and a tax *which finds the article already incorporated with that mass by the act of the importer;* that as to the power to regulate commerce, none of the evils which proceeded from the feebleness of the federal government contributed more to the great revolution which introduced the present system, then the deep and general conviction that commerce ought to be regulated by Congress; that the

grant should be as extensive as the mischief, and should comprehend all foreign commerce *and all commerce among the States;* that that power was complete in itself, acknowledged no limitations other than those prescribed by the Constitution, was co-extensive with the subject on which it acts and not to be stopped at the external boundery of a State, but must be capable of entering its interior; that the right to sell any article imported was an inseparable incident to the right to import it; *and that the principles expounded in the case applied equally to importations from a sister State.* Manifestly this must be so, *for the same public policy applied to commerce among the States as to foreign commerce, and not a reason could be assigned for confiding the power over the one which did not conduce to establish the propriety of confiding the power over the other.* Story, Constitution, Sec. 1066. And although the precise question before us was not ruled in Gibbons v. Ogden and Brown v. Maryland, yet we think it was virtually involved and answered, and that this is demonstrated among other cases, in Bowman v. Ry., 125 U. S. 465." (pp. 110, 111, Italics ours.).....

"Under our decision in Bowman v. Chicago, etc., Railway Co., supra, they, (plaintiffs) had the right to import this beer into that State and in the view which we have expressed, *they had the right to sell it, by which act alone it would become mingled in the common mass of property within the State.* Up to that point of time we hold that in the absence of congressional permission to do so, the State had no power to interfere by seizure, *or any other action,* in prohibition of importation and sale by the foreign or non-resident importer." (Page 124, Italics ours.) .....

"The authority of Peirce v. New Hampshire, inso-

far as it rests on the view that the law of New Hampshire was valid because Congress had made no regulation on the subject, must be regarded as having been distinctly overthrown by the numerous cases hereinafter referred to." (P. 118; Italics ours.)

Again, on Page 119:

"It is only after the importation is completed, and the property imported *has mingled with and become a part of the general property of the State*, that its regulations can act upon it, except so far as may be necessary to insure safety in the disposition of the import until thus mingled." (Italics ours.)

In re Rahrer, 140 U. S. 545, this court had under consideration the "Wilson Bill," enacted in 1890, which provided that that upon the arrival in any State or Territory of intoxicating liquors transported therein, they should be subject to the operation and effect of the laws thereof, enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquors had been produced in such State or Territory, and should not be exempt therefrom by reason of being introduced therein in original packages or otherwise.

After referring to Leisy v. Hardin and stating that the judgment in that case was reversed on the ground that the Iowa legislation,—as construed to apply to importations into the State from without and to permit the seizure of the articles before they had, *by sale or other transmutation*, become a part of the common mass of property of the State,— was repugnant to the third clause of Section eight of article one of the Federal Constitution, this court held that the effect of the Wilson Bill was to modify the rule, *solely with respect to the importation of intoxicating liquors*, by removing the impediment to the enforcement of the state laws in respect to imported packages in their original condition. On this point the court said:

"No reason is perceived why, if Congress chooses

> to provide that certain designated subjects of interstate commerce shall be governed by a rule which divests them of that character at an earlier period of time than would otherwise be the case it is not within its competency to do so."

Pittsburg Coal Co. v. Bates, 156 U. S. 577, involved a situation similar to that in Brown v. Houston, and was decided on the authority of that case.

In Norfolk & Western Ry. Co. v. Sims, 191 U. S. 441, 449, the court said:

> "Upon the other hand, for the past seventy-five years and ever since the original case of Brown v. Maryland, 12 Wheat. 419, we have uniformly held that States have no power to tax directly or by license upon the importer, goods imported from foreign countries *or other states,* while in their original packages, *or before they have become commingled with the general property of the State and lost their distinctive character as imports.*" (Italics ours.)

Later on, in Pabst Brewing Co. v. Crenshaw, 198 U. S. 17, the court again affirmed its position to the effect that simply and wholly by force of the Wilson Bill, the commodities therein covered and embraced were divested of their character as articles of interstate commerce after their delivery in the state into which they had been transported; but that the rule as to commodities not covered by the Wilson Bill was unchanged and was as laid down in the cases hereinbefore cited and quoted from.

So that, save as to the exception made as to the commodities especially covered by the Wilson Bill, the law stood as hereinbefore stated.

In American Steel & Wire Co. v. Speed, 192 U. S. 500, the Steel Co. sued to recover certain *taxes* levied under the Constitution and statutes of Tennessee, which it had paid to the state

under protest; on the ground that the taxes in question were repugnant to the Constitution of the United States.

The plaintiff, a New Jersey corporation, owned and operated various plants for the manufacture of wire, nails, etc., in states other than Tennessee. For the purpose of facilitating sales and delivery of its manufactured product it had selected Memphis Tennessee, as a distributing point and had arranged with the Patterson Transfer Co. at Memphis to take charge of the products consigned to the Steel Co., when shipped to Memphis, store them in the warehouse of the Transfer Co., assort them and make delivery to the persons to whom the goods were sold by the Steel Company,—that is, either to jobbers at Memphis, or to jobbers beyond the limits of Tennessee, over the various lines of railways and steamboats running into Memphis, as and when directed by complainants.

None of the Steel Company's products were ever sold to the Transfer Co. or were by the latter sold to others, and under the arrangement between plaintiff and the Transfer Co. the latter's functions were confined to transferring plaintiff's product to the warehouses, its assortment in the warehouses, the keeping of it in storage, and its subsequent delivery to the customers of the complainant under the latter's general or special orders.

After stating the foregoing facts, this court sustained the State Supreme Court in its decision, that the goods were not in transit, on the contrary, had reached their destination at Memphis and were there held and stored at the risk of the Steel Co., to be sold and delivered as contracts for that purpose were completely consummated by the Steel Co. and its customers through the medium of the former's sales agents; and that all question as to the power of the State to levy the merchants' tax, was without merit.

With respect to the asserted want of power of the state of Tennessee to tax, because the goods were importd from another

State and were yet in the original packages, this court said, in part, on page 519:

> "Assuming that the goods, concerning which the State taxes in this case were levied, were in the original packages and had not been sold, if the bringing of the goods into Tennessee from another State constituted an importation, in the constitutional signification of that word," (Article I, Section 10, paragraph 3,) "it is clear they could not be directly or indirectly taxed. But the goods not having been brought from abroad, they were not imported in the legal sense and were subject to State taxation after they had reached their destination *and whilst held in the State for sale.* This is as conclusively foreclosed by the decisions of this court as is the doctrine resting upon the decision in Brown v. Maryland. Woodruff v. Parham, 8 Wall. 123, Brown v. Houston, 114 U. S. 622. (Italics ours.) .....
>
> "The doctrine upon which the cases rest was this, that imports, in the constitutional sense, embraces only goods brought from a foreign country, and consequently does not include merchandise shipped from one State to another. The several states, therefore, not being controlled as to such merchandise by the prohibition against the taxation of imports, it was held that the states had the power, after the goods had reached their destination *and were held for sale, to tax them without discrimination, like other property situated within the State.*" (Italics ours.)

The court then proceeded to state that the cases of Woodruff v. Parham and Brown v. Houston, supra, were decisive of every contention urged on the record depending on the import and commerce clause of the Constitution of the United States, that the doctrine announced therein had never been questioned, and that the cases in question had been approvingly referred to in

decisions in that court too numerous to be cited.

However, in view of the fact that it was contended that they had been overruled by the cases of Leisy v. Hardin, 135 U. S. 100, and Lyng v. Michigan, 135 U. S. 161, the court pointed out the misconception upon which such contention was predicted, in the following language:

> "It results from assuming that the rule which governs in a case where there is an absolute prohibition is applicable where no such prohibition obtains. Brown v. Maryland illustrates the first of these cases, while Woodruff v. Parham, Brown v. Houston, Leisy v. Hardin, Lyng v. Michigan are examples of the other. (Page 521.) .....
>
> "Thus, in Brown v. Maryland, there was an absolute want of power to tax imports, and it was held that a state enactment which operated to tax imports, whether directly or indirectly, was within the positive prohibition. In other words, that imports could not be taxed at all until they had completely lost their character as such. (Page 521).
>
> "Woodruff v. Parham, and Brown v. Houston, on the other hand, so far as interstate commerce was concerned, dealt with no positive and absolute inhibition against the exercise of the taxing power, but determined whether a particular exertion of that power by a state so operated upon interstate commerce as to amount to a regulation thereof, in conflict with the paramount authority conferred upon Congress. In order to fix the period when interstate commerce terminated, the criterion announced in Brown v. Maryland, that is, sale in the original packages at the point of destination, was applied. The court, therefore, *conceded that the goods which were taxed had not completely lost their character as interstate commerce, since they had not been sold*

in the original packages. As, however, they had arrived at their destination, were at rest in the State, were enjoying the protection which the laws of the State afforded, and were taxed *without discrimination like all other property*, it was held that the tax did not amount to a regulation in the sense of the Constitution, although its levy might remotely and indirectly affect interstate commerce. (Page 521; Italics ours.)

"In Leisy v. Hardin and Lyng v. Michigan the same question in a different aspect was presented. The goods had reached their destination and the question was not the power of the state to tax them, but its authority to treat the goods as not the subject of interstate commerce and to prohibit their introduction or sale. This was held to be a regulation within the constitutional sense, and therefore void. The cases, therefore, did not decide that interstate commerce was to be considered as having completely terminated at one time for the purpose of import taxation, and at a different period for the purpose of interstate commerce. But both cases, *whilst conceding that interstate commerce was completely terminated only after the sale at the point of destination in the original packages,* were rested upon the nature and operation of the particular exertion of state authority considered in the respective cases." (Page 521, 522.) (Italics ours.)

As we interpret the distinction drawn between the Woodruff and Brown cases on the one hand, and the Leisy and Lyng cases on the other, it amounts, differently expressed, to this: In neither of the four cases had the commodities involved lost their character or identity as interstate commerce, as they remained in original packages and had not been sold. However, as the commodities in the Woodruff and Parham cases had arrived at their destination and were enjoying the protection which the laws of

the state afforded, it was held that *a tax levied alike without discrimination on all other property within the state*, while possibly remotely and indirectly affecting interstate commerce, in nowise affected or restricted the right to sell, and did not amount to a regulation in the sense used in the Constitution; while as to the commodities involved in the Leisy and Lyng Cases, although they also had arrived at their destination and remained in original packages, the effect of the State law was to treat the goods as not the subject of interstate commerce in any sense, and to absolutely prohibit their introduction or sale.

In Heyman v. Southern Railway Co., 203 U. S. 270, in referring to the case of Rhodes v. Iowa, 170 U. S. 412, this court said, on page 273:

> "The case, therefore, necessarily involved deciding the meaning of the word "arrival" in the Wilson Act, and this required an ascertainment of when goods shipped from one State to another, generally speaking, ceased to be controlled by the interstate commerce clause of the Constitution, and how far the general rule resulting from the power of Congress to regulate commerce had been limited, if at all, by the provisions of the Wilson Act. Considering the first question, the elementary and long-settled doctrine was reiterated that *delivery and sale in the original package was necessary to terminate interstate commerce*, so far as the police regulations of the States were concerned."

Again, on page 276:

> "As the general principle is that goods moving in interstate commerce cease to be such commerce *only after delivery and sale in the original package*, and as the settled rule is that the Wilson law was not an abdication of the power of Congress to regulate interstate commerce, since that law simply affects an incident of such commerce by allowing the State power to attach after

> delivery *and before sale*, we are not concerned with whether, under the law of any particular State, the liability of a railroad company as carrier ceases and becomes that of a warehouseman on the goods reaching their ultimate destination before notice and before the expiration of a reasonable time for the consignee to receive the goods from the carrier. For, whatever may be the divergent legal rules in the several States concerning the precise time when the liability of a carrier as such in respect to the carriage of goods ends, they cannot affect the general principle as to when an interstate shipment ceases to be under the protection of the commerce clause of the Constitution, and thereby comes under the control of the state authority." (Italics ours.)

In General Oil Co. v. Crain, 209 U. S. 211, supra, plaintiff was a Tennessee corporation engaged in the sale of illuminating oils and other petroleum products in various states of the Union, with its principal place of business in Memphis. Its oils, refineries, and manufacturing plants were all in Pennsylvania and Ohio, from which it shipped its products to the states in which they were sold. Memphis was one of its distributing points, to which its oils were shipped from Pennsylvania and Ohio in tank cars and there unloaded into storage tanks, barrels and other receptacles, to be forwarded to customers in Arkansas, Louisiana and Mississippi.

It being impracticable to fill small orders from the tank cars direct, because of great delay and freight charges incident to such plan, and for the further reason that it would involve an extensive plant and apparatus, to thus unload direct from the tank car, the oils arriving at Memphis were unloaded into plaintiff's storage tanks at the point. Such of the oil as already had been sold to customers in states other than Tennessee was drawn into a storage tank, on the outside of which was plainly and conspicuously marked "Oil already sold in Arkansas, Louisiana

and Mississippi," and this oil remained in Memphis for a few days only, while in the process of distribution into smaller receptacles to conform to the requirements of the parties to whom it had been sold. Other of plaintiff's oils were drawn into a storage tank marked "Oil to be sold in Arkansas, Louisiana and Mississippi;" while oils to be sold within the state of Tennessee were drawn into a third storage tank devoted exclusively to that purpose.

The state Oil Inspector, acting under Section 8, Chapter 349, of the Act of April 21, 1899, inspected plaintiff's oils at Memphis and charged and collected therefor the regular fee of 25c per barrel, provided by said act.

On the ground that the state had no right to inspect oils already sold, and intended to be sold, outside of Tennessee,—for the reason that such inspection would be a regulation of, and interference with, commerce between the states of Pennsylvania and Ohio, from which said oil was shipped, and the states of Arkansas, Louisiana and Mississippi, to which the same was shipped,—plaintiff filed its bill praying that the defendant inspector be enjoined from such inspection and collection. The Supreme Court of Tennesee held that the suit was one against the state (being the only point considered in its decision,) and sustained the demurrer theretofore interposed by defendant.

The case then coming before this court on writ of error, it was held that while the State Supreme Court had erred on the question of jurisdiction, its decision must be sustained by reason of the fact that the commodity in question had ceased to be the subject of interstate commerce, had become commingled with the great mass of property in the state, and was therefore subject to the operation of the Act in question, which this court treated and passed upon solely as a *tax measure*.

After reviewing certain cases, *all involving taxation, and not inspection*, the court quoted from Kelley v. Rhoads, 188 U. S. 1, as follows:

"The substance of these cases is that, while property is at rest for an indefinite time awaiting transportation, or awaiting a sale at its place of destination, or at an intermediate point, *it is subject to taxation.* But if it be actually in transit to another state, it becomes the subject of interstate commerce and is exempt from local assessment." (Italics ours.)

Continuing, as to the case then before it, the court said:

"Like comment is applicable to plaintiff in error and its oil. The company was doing business in the State, and its property was receiving the protection of the State. Its oil was not in movement through the State. It had reached the destination of its first shipment, and was held there, not in necessary delay or accommodation to the means of transportation, as in State v. Engle, supra, but for the business purposes and profit of the company. It was only there for distribution, it is said, to fulfill orders already received. But to do this required that the property be given a locality in the State beyond a mere halting in its transportation. It required storage there,—the maintenance of the means of storage, of putting it in and taking it from storage."

"The bill takes pains to allege this. 'Complainant shows that it is impossible in the coal oil business, such as complainant carries on, to fill separately each of these small orders directly from the railroad tank cars, because of the great delay and expense in the way of freight charges incident to such plan, and for the further reason that an extensive plant and apparatus is necessary, in order to properly and conveniently unload and receive the oil from said tank cars, and it would be impracticable, if not impossible, to have such apparatus and machinery at every point to which complainant ships said oil."

"This certainly describes a business—describes a purpose for which the oil is taken from transportation, brought to rest in the State and for which the protection of the State is necessary, a purpose outside of the mere transportation of the oil. The case, therefore, comes under the principle announced in American Steel & Wire Co. v. Speed 192 U. S. 500."

"*We have considered this case so far in view of the cases which involve the power of taxation.* It may be that such power is more limited than the power to enact inspection laws. Patapsco Guano Co. v. Board of Agriculture, 171 U. S. 345, 356. The difference, if any exists, it is not necessary to observe. *The cases based on the taxing power show* the contentions of plaintiff in error are without merit; in other words show that its oil was not property in interstate commerce." (Italics ours.)

It thus appears that the law was sustained *as a tax measure and not as an inspection law.* As said in the dissenting opinion of Mr. Justice Moody:

"The law is not sustained by the judgment of the court as an inspection law, which it purports to be. Perhaps it could not be under the doctrine announced and applied in Minnesota v. Barber, 136 U. S., 313, and Brimmer v. Rebman, 138 U. S. 78. *I am therefore relieved from considering whether the law, because it is a mere cloak for exacting revenue from interstate commerce, is bad as an inspection law. The judgment of the court treats it as such, and it is sustained not as an inspection, but as a revenue law.* I do not dissent from such an interpretation of its effect. But, with unfeigned deference to the opinions of my brethren, I venture to think that the statute, as enforced in the case at bar, is bad as a taxing law." (Italics ours.)

And it will be further noticed that in his concurring opinion,

Mr. Justice Harlan refrained from discussing the taxation or inspection feature.

Furthermore,—and this point appears to have been entirely ignored by the Minnesota Supreme Court,—under the Tennessee Act *inspection of illuminating oil and gasoline coming into the State in tank cars was not required, nor even contemplated, before unloading; on the contrary, not until the product had not only been unloaded into the storage tank, but had further been drawn from the latter into the barrels or other receptacles in which it was to be further shipped, or sold.*

The provisions of the Tennessee Act of April 21st 1899 (Suppl. to Code of Tennessee, 1897-1903, pages 558-564) touching the precise question involved, were as follows:

> Sec. 2. What to inspect; "rejected" and approved;" refusal to allow inspection; fine.—It shall be the duty of the inspector promptly to inspect or test all illuminating oils or fluids which are subject to inspection as provided in this act, within the city or county for which he is appointed. The inspector shall in all cases take the oil or fluid from the package which is intended to be branded, and in no case shall mark or brand any package before having first inspected or tested the contents thereof; and the quantity used for testing the flash test thereof shall not be less than half a pint, and shall be ascertained by applying thereto a well lighted match; and all such illuminating oils or fluids that will flash at a less temperature than 120 degrees Fahrenheit is to be branded "rejected," and all that will stand the flash test of 120 degrees Fahrenheit he shall brand "approved standard oil."
>
> Sec. 3. Brands.—The inspector shall, in addition to the brand provided in section 2, affix his brand or device upon each package by him inspected, designating first his name and place and date of inspection, thus

"Inspector of .....18..;" second, the flash test thus: "Flashed at .....degrees temperature;" third, if the fluid inspected has no flash test, then the specific gravity of same, thus: "Specific gravity.....degrees;" fourth, the capacity of the package in gallons and outs, thus: "Gallons...., outs....;" provided, that if hereafter weights shall be established for the ascertaining of the quantity, in place of gauging by gallons, then the inspector shall mark on the package inspected by him the gross weight in place of gallons, as provided for in this section. The inspector shall, in addition to the aforesaid, affix his brand on all packages by him found to contain fluids that have no flash test as aforesaid, with these words: "Highly inflammable."

Sec. 4. Selling before inspection; erasing; misdemeanors; fines; forfeiture goes to schools.—If any person, manufacturer, or dealer shall sell to any person whatever in the state any of said illuminating oils and fluids before first having the same inspected as provided in this act, he shall be guilty of a misdemeanor, and on conviction be fined in any sum not exceeding three hundred dollars, and the oils and fluids, if found to be rejected, be forfeited and sold, and the proceeds go to the common school fund of the state. If any manufacturer or dealer of said illuminiating oils or fluids shall, with intent to deceive or defraud, alter or erase the inspector's brand, to indicate a different flash test, gravity, or quantity than is found by the inspector, or shall use with such intent packages having any inspector's brand thereon without having the contents actually inspected, shall, on conviction, be fined in any sum not exceeding fifty dollars for every such offense.

Sec. 8. Term; removal; fees.—The term of office for said inspectors shall be for two years, or until re-

moved by the governor, and each shall demand and receive from the owner of the illuminating oils or fluids inspected and marked and branded as in this act provided, twenty-five cents for each barrel, and ten cents for each smaller package.

It will be observed that uder Section 2 of the Tennessee Act the inspector, *in all cases*, was to take the oil or fluid *from the package which was intended to be branded*, and was in no case to mark or brand any package, as "approved" or "rejected" before having first inspected or tested the contents thereof.

Section 3 provided that in addition to the brand referred to in section 2, the inspector *should affix to each package by him inspected* certain other information relative to place and date of inspection, flash test or specific gravity, capacity in gallons and the name of the inspector. Fluids having no flash test were also to be branded as "highly inflammable."

Section 4 provided and designated a penalty for sale prior to inspection.

It will thus be seen, as above stated, that the requirements of the Tennessee Act could in nowise be met or complied with *by inspection made while the product was in the tank cars in which it had been shipped into the State, or at any other time than after the product had first been transferred to the storage tanks and then drawn into the barrels or other receptacles in which form it was to be, or had been, sold.*

Consequently, at the time of the Act operated upon the product it had not only been delivered and accepted, but it had completely lost its identity as an original package, and had become practically, as well as theoretically, commingled with the general property of the State.

That it was apparent to this court that the inspection was confined to oil, etc., *already drawn from the storage tanks*, is conclusively established by the recital in the statement of the case, on page 214, of the fact that plaintiff claimed that defend-

ant had no right to inspect or collect fees because the act of 1899 was unconstitutional "in so far as it provides for or requires an inspection of any of the oil in said tanks;" the words "said tanks" having reference to storage tanks, Nos. 1 and 2.

As above stated, the decision in the Crain case was based upon the prior holding of that court in the American Steel & Wire Co. case, which, in turn, was predicated on Woodruff v. Parham and Brown v. Houston.

Woodruff v. Parham, as we have seen, involved a *tax* on sales of merchandise, *imposed alike upon all sales made in the city of Mobile, Alabama, whether the goods sold were the product of that State, or some other.* While it is true that the goods remained in the original unbroken packages, there was no legislative requirement, such as an inspection act, to operate upon them *before* they could be offered for sale.

The same situation obtained in Brown v. Houston, which involved, as stated by the court, *"a general tax laid alike on all property (not merely coal) "within the city."* The court was careful to emphasize the general character of this tax by saying that:

> "The taxing of goods coming from other States, as such, or by reason of their so coming, would be a discriminating tax against them as imports, and would be a regulation of interstate commerce, inconsistent with that perfect freedom of trade which Congress has seen fit should remain undisturbed. But if, after their arrival within the State,—that being their place of destination for use or trade,— if, after this, they are subjected *to a general tax laid alike on all property within the city,* we fail to see how such a taxing can be deemed a regulation of commerce which would have the objectionable effect referred to." (Italics ours.)

Here again there was no legislative enactment, by way of an inspection act, or otherwise, to operate as *a condition precedent*

to sale.

American Steel & Wire Co. v. Speed was of similar character. The commodities, although still in the original packages, had been stored in a warehouse in Memphis, for sale. In this position they were taxed, to adopt the language of the court, *"without discrimination, like other property situated within the State."* Still no act involved creating a condition precedent to sale. The whole question was succinctly stated in the following statement by the court:

> "The doctrine upon which the cases rest was this, that imports, in the constitutional sense, embraces only goods brought from a foreign country, and consequently does not include merchandise shipped from one state to another. The several States, therefore, not being controlled as to such merchandise by the prohibition against the taxation of imports, it was held that the States had the power, after the goods had reached their destination and were held for sale, *to tax them, without discrimination, like other property situated within the State."* (Italics ours.)

In General Oil Co. v. Crain the Act before the court *could not be sustained as an inspection act* and only passed muster, so to speak, as a *tax measure.* The situation in this case, in one respect, was less favorable to the owners of the merchandise than in any of the cases last above referred to, as the commodity *had been removed from the original package and actually and physically commingled with other property.* Moreover, the Act in controversy, whether an inspection or a revenue measure, *did not and could not operate upon the product in the original package.*

Bacon v. Illinois, 227 U. S. 504, similarly involved a general Tax, levied alike upon all personal property in the State, and was decided upon the authority of the cases hereinbefore reviewed. In the closing paragraph this court said:

"In the present case the property was held within the State for purposes deemed by the owner to be beneficial; it was not in actual transportation; and there was nothing inconsistent with the Federal authority in compelling the plaintiff in error to bear with respect to it, *in common with other property in the State,* his share of the expense of the local government." (Italics ours.)

In Susquehanna Coal Co. v. South Amboy, 228 U. S. 665, the Coal Company produced, or purchased, its product from mines in Pennsylvania and shipped it to New York and eastern states by the Pennsylvania Ry. across New Jersey. Most of this product passed through Harsimus Cove and Greenville piers, New Jersey, from which points, on arrival of the cars, they were floated across the harbor and transferred to railroads on the opposite side.

Coal shipped from Pennsylvania to South Amboy, N. J., was treated in different manner. At this point the coal was intended to be trânsferred to bottoms at tidewater and shipped to states east of New Jersey. If, upon the arrival of the coal at South Amboy, bottoms were on hand to take the kind of coal arriving, it was transferred immediately from the cars to the bottoms. If not, it was dumped into a coal depot or storage yard of the railroad company, located abut 2000 feet from the piers, equipped with derricks for loading and unloading coal, where the different kinds were put into piles, which would subsequently be transferred into bottoms; not necessarily the first bottoms arriving, as preference was given coal subsequently arriving and still in cars.

It further appeared, incidentally, that the Coal Company obtained two beneficial results from this storage proposition, viz: cars arriving when no bottoms were on hand could be released and demurrage charges saved, and when bottoms arrived and no cars were on hand containing the kinds of coal desired, such vessels could be loaded from the piles; resulting in a saving of

time in the departure of such bottoms.

The Coal Company filed a bill in equity to restrain the collection of *taxes* levied by the city of South Amboy upon the coal so temporarily stored from time to time at South Amboy, claiming that it was in interstate commerce and that consequently the levy of such taxes was in contravention of the commerce clause of the Constitution of the United States.

Upon these facts this court held that it was manifest that the coal so deposited in the depot or storage yard of the railroad company at South Amboy was used to fill anticipated orders, orders not immediately made but, it may be, certain to be made. That it did not appear how they could be filled, uncertain in time as they were, except from accumulations at South Amboy, and that the testimony showed that without such accumulations the orders might strike a period when there were no cars and no coal and then customers would suffer. In other words, that it was clear that such trade could only be accommodated through the storage of coal somewhere and that plaintiff in error had availed itself of the conditions to put the storage in New Jersey.

The court then said:

> "The coal, therefore, was not in actual movement through the State; it was at rest in the State, and was to be handled and distributed from there. Therefore, the principles expressed in General Oil Co. v. Crain, 209 U. S. 211, and Bacon v. Illinois, 227 U. S. 504, are applicable to it.
>
> "The products in neither of those cases were destined for sale in the States where stored; the delay there was to be temporary, a postponement of their transportation to their destinations. There was, however, a business purpose and advantage in the delay which was availed of, the products secured the protection of the State. In both cases it was held that there was a cessation of

interstate commerce and subjection to the dominion of the State."

Here again we have a case *involving taxation, not inspection* and one where the subject matter had unquestionably been commingled and converted into an entirely different form from that in which it was shipped, *and where there was nothing to act upon it as a condition precedent to sale.*

In Chicago, Milwaukee & St. Paul Railway Co. v. Iowa, 233 U. S. 334, another case cited by the Supreme Court of Minnesota in rendering its decision, it appeared that the Railroad had refused to accept shipments of coal in carload lots at Davenport, Iowa, for points in that State, when tendered in cars of other Railroad Companies by which the coal had been brought to Davenport from points in Illinois, claiming that the shipments in question were interstate, and it was alleged in the answer of the Railroad Co. that the method of transportation resorted to was a device of shippers to secure, by adding the rate from the initial point in Illinois to Davenport to the rate established by the Iowa distance tariff from Davenport to other points in the State, a lower rate than that applicable to an interstate shipment from the point in Illinois to the point of final destination.

Suit was brought by the State of Iowa to obtain a mandatory injunction requiring the Railway Co. to comply with an order of the State Railroad Commission to the effect that upon the arrival of loaded cars of coal at Davenport, upon any line of railroad, when the cars were placed upon the interchange track at Davenport as ordered or requested by the owner or consignee of said cars and the freight was paid thereon, and the ordinary billing in use by the railway was tendered to it for a billing of said cars so placed to a point on its own line within the State of Iowa, said railway company be ordered and required to accept said billing received of said car or cars so billed and transport them on its own line to the point designated by the owner or consignee in said billing; and that it receive said car or cars in

whatever equipment the same may be loaded, without requiring an unloading and reloading into its own equipment, and transport said car or cars over its own line to points within the State, so loaded, without unloading or reloading as above set forth, in the same manner that it received cars from connecting lines loaded in its own equipment.

The Railroad Commission held that the transportation desired from Davenport was purely intrastate service and the Supreme Court of Iowa took the same view, stating that the facts showed that the coal was originally consigned to the Coal Company in Davenport, that it was there held until sales were made, and that the consignee had taken delivery, paying the freight to the initial carrier, and assuming full control.

In affirming the decision of the State Supreme Court, this court stated that it was undoubtedly true that the question whether commerce was interstate or intrastate must be determined by the essential character of the commerce and not by mere billing or forms of contract. That the fact that commodities received in interstate shipments are reshipped by the consignee, in the cars in which they are received, to their points of destination, does not necessarily establish a continuity of movement or prevent the reshipment to a point within the same State from having an independent and intrastate character.

In closing its opinion the court said:

> "Finally it is said that the order of the Commission interferes with interstate commerce because the cars in question were the vehicles of that commerce and were brought into the State as such. No question, however, is presented here as between the shippers and the owners of the cars, and no actual interference with interstate commerce is shown. Nor does it appear that any regulation under Federal authority has been violated." (P. 345.)

In Robbins v. Shelby Taxing District, 120 U. S. 489, 493, this court said:

> "It is also an established principle, as already indicated, that the only way in which commerce between the states can be legitimately affected by State laws is when, by virtue of its police power, and its jurisdiction over persons and property within its limits, a state provides for the security of the lives, limbs, health and comfort of persons and the protection of property; or when it does those things which may otherwise incidentally affect commerce, such as the establishment and regulation of highways, canals, railroads, wharves, ferries, and other commercial facilities; *the passage of Inspection Laws to secure the due quality and measure of products and and commodities,*.....and the imposition of taxes *upon all property within the state* mingled with and forming part of the great mass of property therein.
>
> "But in making such internal regulations a state cannot impose taxes upon persons passing through the state, or coming into it merely for a temporary purpose, especially if connected with interstate or foreign commerce; nor can it impose such taxes upon property imported into the state from abroad *or from another state*, and not yet become part of the common mass of the property therein; and no discrimination can be made, by any such regulations, adversely to the persons or property of other states; and no regulations can be made directly affecting interstate commerce. Any taxation or regulation of the latter character would be an unauthorized interference with the power given to Congress over the subject."

The foregoing language was cited with approval in Norfolk, etc., Ry. Co. v. Sims, 191 U. S. 441, 449, decided at the same term of court as American Steel & Wire Co. v. Speed. It

was in the Sims case that this court said, as hereinbefore quoted, that:

> "Upon the other hand, for the past seventy-five years and ever since the original case of Brown v. Maryland, 12 Wheat. 419, we have uniformly held that States have no power to tax directly or by license upon the importer, goods imported from foreign countries *or other States, while in their original packages, or before they have become commingled with the general property of the State and lost their distinctive character as imports.* In that case a law of Maryland required importers to take out a license before they could be permitted to sell their imported goods. That was declared to be void not only as a tax upon imports, but as an infringement upon the power of Congress to regulate commerce. The case is one of the most important ever decided by this court, and has been adhered to by a uniform series of decisions since that time." (P. 449).

As said in American Steel & Wire Co. v. Speed, supra,—after reviewing the cases of Woodruff v. Parham, and Brown v. Houston on the one hand, and the cases of Leisy v. Hardin, and Lyng v. Michigan on the other hand:

> "The cases, therefore, did not decide that interstate commerce was to be considered as having completely terminated at one time for the purposes of import taxation and at a different period for the purpose of interstate commerce. But both cases, whilst conceding that interstate commerce *was completely terminated only after sale at the point of destination in the original packages*, were rested upon the nature and operation of the particular exertion of State authority considered in the respective cases."

That is to say, that while in the Leisy v. Hardin class of cases it had been held that the State statute would operate *prior to sale*

in the original packages, and while in the Woodruff v. Parham class of cases it had been held that a State general tax law operated on the commodity *after delivery and prior to sale*, although remaining in the original packages, this court, in the American Steel & Wire Co. case, intended to make it plain that the conclusion thus reached did not by any means determine that the commodity had ceased to be an article in interstate commerce at an earlier period in one case than in the other, but that although still an article in interstate commerce as long as it remained in the original package, *it was within the province of the State to subject it to a general tax, levied alike on all other property in the State, while it was not within the province of the State to legislate in prohibition of its sale.*

If we be correct in the analysis and conclusion reached as to the real rule and doctrine promulgated by the cases hereinbefore considered, and if we be equally correct in assuming that the Inspection Act under consideration clearly contemplated inspection prior to unloading, it would appear to conclusively establish the fact that the commodities involved in this action were while in the original unbroken packages, and while thus subjected to inspection prior to being drawn off into storage tanks, commodities in interstate commerce, at least in so far as the effect and operation of the Inspection Act was conserned.

This contention finds confirmation in Pabst Brewing Co. v. Crenshaw, 198 U. S. 17, involving a so-termed inspection act of Missouri providing for the inspection of beer and other malt liquors. As to malt liquors manufactured outside of the State and shipped into it for sale and consumption therein, the act provided that every person, persons or corporation receiving or offering for sale beer or other malt liqours other than those manufactured in the State should, *upon receipt of the same*, and before offering *them for sale*, notify the inspector and furnish him with a sworn affidavit from the manufacturer thereof, or other reputable person having actual knowledge of the composition of said beer or

other malt liquors, that no material other than that allowed by the Act had been used in the manufacture of the same; and that upon the receipt of such affidavit the Inspector should inspect and label the package containing said beer or malt liquors; for which services he was to receive like fees as those imposed upon the manufacturers of beer and malt liquors in the State of Missouri.

The Brewing Company, a Wisconsin corporation, filed its bill in the Circuit Court of the United States to enjoin the Beer Inspector of the State of Missouri, and his assistant, from collecting or attempting to collect said inspection charge, fee, license or burden, upon the ground that the exactions complained of were regulations of commerce repugnant to the Constitution of the United States.

The validity of the Act was sustained by this court, by a five to four decision, solely upon the following grounds: That under the Wilson Act the state statute was operative, as an exercise of police power, subsequent to delivery and before sale, even though the goods remained in original packages; and that the court was foreclosed from considering whether it was a valid exercise of the police power (because of excessive fees and other matters) because the Supreme Court of the State had held it valid under the State Constitution, as a fee representing the price which the State demanded for the privilege of brewing and selling malt liquors in the State; a traffic which the United States Supreme Court said the State had the power to prohibit entirely, under the Wilson Act.

We will now review the cases dealing with laws that at least purported to be inspection laws, and not confessedly taxation measures.

In Foote v. Maryland, 232 U. S. 494, the plaintiffs were D. E. Foote & Co., a Delaware corporation; William H. McGee, trading as William H. McGee&Co.; J. Langrall&Bros., a Maryland corporation; and C. L. Applegarth Co., also a Maryland cor-

poration. The defendant Stanley was Comptroller of the State of Maryland.

Plaintiffs were oyster packers in Baltimore and large buyers of oysters in the shell, shipped to them in vessels or cars from the oyster beds of the States of Maryland, Virginia and New Jersey. The oysters *were delivered to plaintiffs at their respective factories in Baltimore in vessel-loads or part vessel-loads, or in barrels or bags and in the same condition as shipped and brought from the respective localities in the three states where said oysters were procured.*

Section 69 of the Inspection Act of Maryland provided among other things, for the appointment of twenty inspectors, at a salary of $45.00 per month each, who were required to inspect all oysters in the respective districts to which they were assigned and to thereupon furnish to both buyer and seller a certificate in substantially the following form:

> "I hereby certify that I have this day inspected for Captain.....of the Schooner..... a cargo of oysters sold to....., and found the same to contain.....bushels of merchantable oysters, and.....bushels of unmerchantable oysters."

The section further provided for a charge of one cent per bushel, to help defray the expenses of such inspection and the other expenses of the State Fishery Force, *"upon all oysters unloaded from vessels at the place where said oysters are to be no further shipped in bulk in vessels,"* to be charged equally to buyer and seller.

Under Section 10 it was made unlawful for the packer (purchaser) to unload oysters from the vessels, except in the presence of an inspector. So that, as in the case at bar, *the termination of the shipment was designated by the statute as the place and time of inspection.*

The fee in question was charged equally to the buyer and

seller and in case it was not paid at the end of the week in which the inspection was made, the property of the party indebted was levied upon and sold by the Comptroller, "as in cases of taxes in default, without further process of law."

Plaintiffs refused to pay the inspection fees charged against them between October, 1910 and April, 1911, and the Comptroller threatened to enforce collection by levy and sale. Plaintiffs thereupon filed a bill in the Circuit Court of Baltimore City, seeking an injunction on the ground that the inspection fees were excessive and constituted a burden on interstate commerce, and a violation of the provision of the Federal Constitution to the effect that "No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws." The Circuit Court of Baltimore City held that the inspection law was valid, refused to enjoin its collection and dismissed the bill. This judgment was affirmed by the State Court of Appeals (117 Md. 335; 82 Atl. 380), and the case taken to this court by writ of error.

The case was originally tried and heard upon an agreed statement of facts from which it appeared, among other things, that the salaries of the inspectors amounted to about $14,000 per annum, and that after the deduction of these salaries there was for the years 1909 and 1910, respectively, an excess of $22,010, and $28,680; which excess was carried to the credit of the Oyster Fund, which, under Section 30 thereof, was subject to be drawn upon "for the purpose of maintaining sufficient and proper police regulations for the protection of fish and oysters in Maryland waters and in the payment of the officers and men and keeping in repair and supplying the necessary means of sailing the boats and vessels of the State Fishery Force."

While not appearing in the reported case, the transcript of record filed in this court on January 8th, 1912, shows that among the various facts agreed and stipulated to were the fol-

lowing: That each of the plaintiffs had been regularly assessed on the stock at their factories in Baltimore city and had annually paid the state and city taxes on such assessments. That for the period between October 1, 1910, and September 18, 1911, the receipts were $25,403.20, and disbursements $15,093, leaving a balance or excess of $10,310.20, which was similarly carried to the credit of the oyster fund. That, as subsequently pointed out in the opinion of the court, the excess thus credited to the Maryland State Oyster Fund was used for other purposes, such as the maintenance of the State Fishery Force, whose duties, among other things, were to patrol the waters of the state and guard places where violations of the law were suspected, assist the shell fish commissioners in locating natural oyster beds, bars and rocks, enforce all laws of the state relating to fish, etc.

The State Court of Appeals held that Section 10, Article 1 of the United States Constitution had no application for the reason that the oysters were not imported from any foreign country; that so far as the commerce clause of the constitution was concerned, it was the province of Congress, and not of the courts to decide whether or not a duty or charge under an inspection law was excessive; that even treating the question of excessiveness as a judicial question, the court could only conclude that the charge was not so seriously in excess of what was necessary for the objects designed to be effected as to justify the imputation of bad faith and change the character of the law from an inspection measure to a taxing measure.

In reversing the decision of the Maryland Court of Appeals, this Court held:

1. That inspection necessarily involves expense, and that the power to fix the fee to cover that expense is left *primarily* to the legislature, which must exercise discretion in determining the amount to be charged, since it is impossible to tell exactly how much will be realized under the future operations of any law

and, moreover, for the reason that receipts and disbursements may so vary from time to time that the surplus of one year may be needed to supply the deficiency of another. Consequently if the fees exceed cost by a sum not unreasonable, no question can arise as to the validity of the tax so far as the amount of the charge is concerned. Further, even if it appears that the sum collected is beyond what is needed for inspection expenses, the courts do not interfere, *immediately on application*, for the reason that the presumption obtains that the legislature will reduce the fees to a proper sum.

2 But when the facts show *that what was known to be an unnecessarary amount has been levied, or that what is proved to be an unreasonable charge is continued*, then the courts are obliged to act in the light of those facts and to give effect to the provision of the Constitution prohibiting the collection by a State of more than is necessary for executing its Inspection Laws.

3. That in making such inquiry, the court treats the fees fixed by the legislature for inspection proper as *prima facie* reasonable and does not enter into any nice calculation as to the difference between cost and collection; nor will it declare the fees to be excessive unless it is made clearly to appear that they are obviously and largely beyond what is needed to pay for the inspection service rendered.

4. However, effect must be given to the provision of the Constitution which, *in unusual and emphatic terms, permits the State to collect only what is "absolutely necessary."* If, therefore, it is shown that the fees are disproportionate to the service rendered, or that they include the cost of something beyond legitimate inspection to determine quality and condition, the tax must be declared void because such costs, by necessary operation, obstruct the freedom of commerce among the states.

5. That the question of reasonableness *may be considered in the light of the practical operation of the law with a view of determining, with reasonable certainty, the permanent relation*

between the amount collected and the cost of inspecting, and that it is the duty of the courts to pass upon the question so as to protect the private citizen against the payment of inspection fees larger than those authorized by the Constitution.

6. That the excess collected in the case at bar might have been valid as a tax on property in Maryland, but was a burden on interstate commerce when levied upon oysters coming from other states, *and that this fact rendered the whole tax void,* because there was no claim that the intrastate commerce could be separated from the interstate shipments, or that the legislature would have taxed the one and not the other.

From the opinion in the Foote case it is clearly evident that this court not only had under consideration the fact that it was evident from reading the Act itself that any excess of fees derived from oyster inspection was to be applied to other purposes, but also had in mind the important bearing of the fact of such excess in and of itself.

This is evident from that portion of the opinion wherein the court said:

> "But the commingling of these various duties, paid for out of a fund raised for inspection, does not necessarily show that the fee is excessive. For the presumption of invalidity arising from such intermingling might be met by carrying the burden of showing that, while the statute required payment out of such joint fund, the collections were not sufficient, but only helped, to pay the definitely ascertained expenses of inspection. The question of reasonableness, therefore, may be considered in the light of the practical operation of the law with a view of determining, with reasonable certainty, the permanent relation between the amount collected and the cost of inspecting."

It is noticeable that nowhere in either the opinion of the court, or the briefs of respective counsel, is found any allusion to,

or mention of, the Crain case, or was the point in anywise raised or relied upon that the inspection fees, so far as they concerned Virginia and New Jersey oysters, did not operate upon interstate commerce on the ground that the oysters taken from the Virginia and New Jersey boats had been delivered to plaintiffs, had come to rest on the wharves at the city of Baltimore, and consequently had become commingled with other property of the plaintiffs and had become part and parcel of the general mass of property of the State and was under its protection.

In the brief for the State of Minnesota, in the Bartles case, is was said that the Foote case did not actually decide that the commodity there under consideration was the subject of interstate commerce and that the inspection act operated upon it as such. It was further stated in the brief that "The case seems to have been submitted by both sides in that court without any argument or authorities on this point."

With all due respect to the counsel for the State, the Foote case did decide this precise question, and even the brief excerpt, on pages 497-499 of 232 U. S. of the brief for plaintiffs in error, indicates that the interstate commerce proposition was most forcibly and prominently before the court, accompanied by numerous citations of authorities.

If our interpretation and understanding of the Crain case, and of the other cases upon which the Crain case was predicated, be correct, the reason why no question was raised in the Foote case as to the oysters having lost their character as interstate commerce *was because such plainly was not the fact,* for the reason that inspection was required at the time they were unloaded from vessels "at the place where said oysters are to be no further shipped in bulk in vessels." In other words, *inspection was required before, and as a condition precedent to, their becoming commingled with other property in the State and becoming the subject of sale,* whilst in the Crain case the act under consideration did not become operative until after the property

had become commingled with othe property, and even then was not sustained as an inspect'on act.

In the Bartles case the Minnesota Supreme Court said that the Foote case did not overrule the Crain case. That is undoul:tedly true, and the reason is clearly indicated by the analysis, herein contained, of both cases.

The Foote case, being the latest expression of this court on the subject, has conclusively settle:l and established among others, the following propositions:

First: While the Federal Constitution prohibits a State from regulating interstate commerce, it at the same time authorizes it to burden that commerce by the collection of the necessary expenses of enforcing its Inspection Laws; affirming Gibbons v. Ogden, 9 Wheat. 1.

Second: That effect must be given *by the courts* to the provisions of the Constitution which, in unusual and emphatic terms, permits the State to collect only what is "absolutely necessary," and that if it is shown that the fees *are disproportionate to the service rendered*, or that they include the cost of something beyond legitimate expense to determine quality and condition, the tax must be declared void, because such costs, by necessary operation, obstruct the freedom of commerce among the states. Overruling Turner v. Maryland, 107 U. S. 38, and similar cases, and affirming McLean v. Ry. 203 U. S. 38, Brimmer v. Rebman, 138 U. S. 78, Postal, etc., Co. v. Taylor, 192 U. S. 64, Minnesota v. Barber, 136 U. S. 313, Mugler v. Kansas, 123 U. S. 623, Willis v. Standard Oil Co., 50 Minn., 290.

Third: When, in the construction of a statute or ordinance, the question is presented whether it was enacted, or adopted, in the exercise of the police power, or of the taxing power, this presents the power of the State to burden commerce, and the construction by a State court is not binding upon a Federal court. Affirming Brennan v. Titusville, 153 U. S. 289, and also the dissenting opinion (and cases therein cited) in

Pabst Brewing Co. v. Crenshaw, supra.

Fourth: That the provision of the second clause of Section 10, Article 1 of the Constitution of the United States, re-restricting the collection under inspection laws to what is "absolutely necessary" for the expense of their execution, has been interpolated and construed into the commerce clause of the Constitution, third clause of Section 8, Article I. Affirming Patapsco Guano Co. v. North Carolina, 171 U. S. 345, in which the court said:

> "The right to make Inspection Laws is not granted to Congress, but is reserved to the States; but it is subject to the paramount right of Congress to regulate commerce with foreign nations, *and among the several states;* and if any State, as a means of carrying out and executing its Inspection Laws imposes any duty of impost on imports or exports, such impost or duty is void if it exceeds what is absolutely necessary for executing such Inspection Laws." (Italic ours.)

The decision in Foote v. Maryland clearly shows that the court recognized that both the 8th and 10th Sections of Article 1 of the Constitution were invoked by plaintiffs in error in contesting the validity of the Inspection Law there under consideration, and further shows that the court clearly recognized the fact that while the second clause of Section 10, Article 1 had special reference to commerce between the States and foreign nations, and not between the States themselves, the provision therein contained, that the amount collected by a State for executing its inspection laws should be limited and restricted to what should be absolutely necessary for that purpose, applied with equal force and effect to the commerce clause of the Constitution.

Fifth: That whatever may be the power of a State over commerce that is completely internal, it can no more prohibit

or regulate that which is interstate than it can that which is with foreign nations. Power over one is given by the Constitution of the United States to Congress in the same words in which it is given over the other, and in both cases it is necessarily exclusive. That the transportation of property from one State to another is a branch of interstate commerce, is undeniable. Affirming Ry. Co. v. Husen, 95 U. S. 465, In re Rahrer, 140 U. S. 555, and Savage v. Jones, 225 U. S. 501, in which the court that said sales made in one state, to be delivered free on board of cars at that point and delivered to purchasers in another state, in the original unbroken packages, freight thereon to be paid by the consumer, constitutes interstate commerce, and that the protection accorded to this commerce by the federal constitution extended to the sale by the receiver of the goods in the original packages.

Sixth: That in whatever language a statute may be framed, its purpose most be determined by its natural and reasonable effect. Affirming Henderson v. Mayor of New York, 92 U. S. 259.

In Bartles Northern Oil Co. v. Jackman, 150 N. W. 576, (No. Dak.), the Oil Company was a North Dakota corporation, engaged in that State in the sale of oils from six different plants located in different counties, with its principal place of business at Grand Forks.

Chapter 214, Laws North Dakota, 1913, prescribed certain processes and proceedings for the inspection of petroleum, illuminating oils, gasoline, or other petroleum products coming into the State, created a state inspector thereof with power of appointing deputy inspectors at all points designated as ports of entry, required the collection of a fee of one-half cent per gallon for such inspection, and made such fees a charge against the person, firm or corporation shipping such oils into the State.

The Oil Company instituted suit against Jackman, as state inspector of oils, in which the bill, after setting forth the salient

features of the inspection law in question, alleged that the fees collected therefor were largely in excess of the amount reasonably necessary for the payment of the expenses of the enforcement of the law, that the excess was transferred to the general fund of the State and used for the same purposes as money raised by general taxation, that the inspector had notified plaintiff of his intention to hold, and was holding, all shipments of oil and gasoline made to plaintiff, as security for the payment of $400.00 or $500.00 of inspection fees which plaintiff had refused to pay. That the inspector refused to deliver said oil so shipped to plaintiff until said fees had been paid by it, that by reason of such facts the business of plaintiff was being interfered with, and that unless the inspector was restrained from taking such action, plaintiff would be unable to obtain any oil for the purposes of supplying its trade and its patrons, and its business would be irreparably damaged etc. Injunctive relief was prayed for and a restraining order asked during the pendency of the action.

The restraining order was granted ex parte, restraining the inspector from holding up or interfering with the shipment of any petroleum, oils or gasoline to plaintiff during the pendency of the action. The Attorney General demurred to the complaint upon the ground that it did not set forth facts sufficient to entitle plaintiff to a temporary, or any other, restraining order, and on the further ground that it attempted to restrain a public officer of the State from performing his official duties, and that plaintiff had an adequate remedy at law.

Upon argument the demurrer was overruled and the State took separate appeals from the order refusing to dissolve the restraining order and from the order overruling the demurrer.

It was further alleged in the bill that the fees received for inspection were so excessive as to amount in effect to a tax or revenue measure, and thus violated the provisions of the United States Constitution governing commerce between the states.

After disposing of the contention of the State that the suit in question was, in fact, a suit against the State and that injunction would not lie to prevent the inspector and his deputies from holding up oil in transit, etc., the court discussed the question of the character and status of the oils under consideration with reference to their being at the time subject of interstate commerce. In this connection the court referred very fully to the case of Foote v. Maryland, and held that that case presented practically the same facts, except as to the subject-matter of the inspection.

The court then referred to the main case relied upon by the State, viz.: General Oil Co. v. Crain, and said in that connection:

> "On first inspection the facts in that case seem to make it an authority, but on close reading it appears that the inspection fee there held valid only related to the inspection of oil shipped into the State *and afterward commingled with the general property of the State;* that is, it was shipped in, unloaded, and placed at rest, perhaps to be thereafter shipped out of the State, but it was held that, in view of its being placed at rest in the State *and the inspection being thereafter made,* it had ceased to be an interstate commodity, and that the provisions of the federal Constitution were not applicable. (Italics ours.)
>
> "If, however, the Crain case would otherwise be an authority, it must be considered as superseded by the Foote case, from which we have quoted, which stands as the law applicable until overruled by the same court. Many authorities are cited from State courts, some apparently sustaining the State's contention, although most of those appearing to be directly in point contain very brief discussions of the subject, and the fee was much smaller. And all were decided prior to the decision

of Foote v. Maryland, supra, hence, insofar as they are in conflict with that authority are of no force or weight."

Castle v. Mason, 91 Ohio State, 296, arose under the following state of facts.

Castle was engaged in the manufacture and sale of oils and other petroleum products at Cleveland, Ohio, buying large quantities of petroleum, oils, gasoline and naphtha from refineries in Pennsylvania and elswhere, and, at the time of instituting suit, had contracts and arrangements for such supplies which he was bound to consummate and which he could only do, without great loss, through his established business.

Sections 844-871 of the General Code of Ohio, enacted May 9th, 1908, provided for the inspection of oils, gasoline and naphtha.

It was alleged in plaintiff's petition, among other things, that the act was revenue producing in character and that the total amount of fees and revenues collected were largely and greatly in excess of the actual necessary expenses of enforcement thereof;—a tabulated statement of receipts, disbursements and net revenue, for a period of seven years, being set forth in the petition. The petition further alleged that the imposition of such tax, in view of its practical working and effect, violated the spirit and letter of the 14th amendment, and of clause 2, Section 10, Article I of the Federal Constitution, and that it violated certain sections of the Ohio Bill of Rights; that because of the imposition of such inspection fees plaintiff was unable to sell his products to railroad companies and paint and varnish makers for their own consumption, for the reason that the latter could import the same from other states without the payment of inspection fees, and that thereby plaintiff was denied the privileges of equal protection guaranteed by the 14th amendment of the Federal Constitution.

It further appears from the decision of the Supreme Court of Ohio that the inspection law in question required each owner of oil inspected to pay certain fees, graduated according to the

amount inspected, ranging from a fee of 50c for single barrels or packages, to 7c per barrel of 50 gallons in lots exceeding 50 barrels; that all fees were paid into the treasury after the payment of salaries to the inspector, deputies and such other expenses incident to the conduct of the inspection office; *and that the inspection was required before unloading and prior to sale, similar to the Minnesota Act*, and covered products manufactured in the State, equally with those shipped in from other states.

In its decision, holding that the inspection act under consideration necessarily operated to impose a burden upon commerce from other states, and, in so far as it affected such commerce it violated the Federal Constitution and was therefore void for the reason that it imposed a burden on such commerce largely in excess of the expense necessary for inspection, the court, in referring to the increasing net yearly revenue from the law, said that it was well established that while a law *might be within the pale of constitutional authority when originally passed, yet because of its future operations it may directly contravene the organic law*. That, quoting from Minnesota v. Barber, 136 U. S. 313, 319, "there may be no purpose upon the part of a Legislature to violate the provisions of that instrument, and yet a statute enacted by it, under the forms of law, may, by its necessary operation, be destructive of rights granted or secured by the Constitution. In such cases, the courts must sustain the supreme law of the land by declaring the statute unconstitutional and void." Citing, Brimmer v. Rebman, 138 U. S. 78; and Poindexter v. Greenhow, 114 U. S. 270.

The court then referred to clause 2, Section 10, of Article 1 of the Federal Constitution, prohibiting any State laying any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws, and then, after referring to the large excess of receipts over necessary disbursements, said:

"Under these circumstances the court feels warrant-

ed in holding that the resultant operation of the law is in direct and flagrant conflict with the Federal Constitution. We are not unmindful of the fact that if properly exercised the legislative purpose in laying inspection duties cannot be inquired into, and that, ordinarily, the amount of the inspection fee is not a judicial question; but it may be subject to judicial attack if the inspection charges are so unreasonable and disproportionate to the service rendered as challenge the good faith of the law, or where it is made clearly to appear that they are obviously and largely beyond what is needed to pay for the cost of inspection. D. E. Foote & Co. v. Stanley, Comp. of the State of Maryland, 232 U. S. 494; New Mexico, ex rel. v. Denver & Rio Grande Ry. Co., 203 U. S. 38.....

"What we do hold is, that under the facts disclosed here where it appears that the fees are not only excessive, *but are being continued, yielding each and every year increasing net revenues* the natural operative effect of the inspection act thus shown is in direct violation of Article I, Section 10 of the U. S. Constitution, and consequently void." Citing, Foote v. Maryland, supra. (Italics ours.)

After referring to the fact that a majority of the judges of the court of appeals sustained the demurrer to the amended petition in reliance chiefly upon the case of Red "C" Oil Co. v. Board of Agriculture of North Carolina, 222 U. S. 380—wherein Chief Justice White quoted a dictum in Patapsco Guano Co. v. N. C. Board of Agriculture, 171 U. S. 345, 354, to the effect that "if the receipts are found to average largely more than enough to pay the expenses, the presumption would be that the Legislature would moderate the charge;"—the court pointed out the distinction between the present case and the Red "C" Oil Co. case in that in the latter case the complaining party filed his

bill two days after the inspection law took effect and consequently that the allegation that the tax was more than double the cost of inspection, was purely speculative.

Coming down to the interstate character of the product subjected to inspection, the court said:

> "The defendant attempts to escape the effect of D. E. Foote & Co. v. Stanley, Comp. of the State of Maryland, supra, by the claim that the Oil act does not interfere with interstate commerce; that the act imposes a charge upon oils, etc., that are sold in this state only, and that after products have been imported into Ohio by tank cars or otherwise they have then assumed a state of rest as intrastate commerce and may be taxed without violation of the federal provision. This is too narrow a construction of the facts pleaded and of the scope of the Ohio act. The act is not in terms made to apply to intrastate products, but applies generally to any and all oils, gasoline, etc., 'whether manufactured in this state or not.' The language employed would require inspection of products shipped into the state, and the features of the inspection would necessarily, though indirectly, impose a burden upon interstate commerce. The amended petition alleges that the plaintiff, though a dealer in Cleveland, Ohio, buys large quantities of those products in Pennsylvania and elsewhere, and has contracts and arrangements for such supplies. The general language used in the Ohio act is substantially similar to the North Carolina act in the Red "C" Oil Mfg. Co. case, supra, and to the Maryland inspection law, declared void in D. E. Foote & Co. v. Stanley, Comp. of the State of Maryland, supra That inspection laws of this character impose a burden on commerce from other states, see Brimmer v. Rebman, supra.
>
> "Neither can the claim be sustained, under the alle-

gations of the amended petition, that the products inspected under the act could be considered as having been incorporated with the general mass of property in the state and thus have lost their distinctive character as imports, and so become products of intrastate commerce. The fact is that Castle, at Cleveland, Ohio, was dealing directly with shipments of oil from Pennsylvania, *and the products he received as such purchaser must, of necessity, have been shipped to him in original packages, which were required to be inspected before sale.* So that neither the amended petition nor the inspection act can be susceptible to such a construction as would apply its provisions to packages which had become intrastate. May & Co. v. New Orleans, 178 U. S. 496." (Italics ours.)

The case of Foote v. Stanley was also cited with approval in State v. Standard Oil Co., 161 N. W. 537 (Neb.)

In Standard Oil Co. v. Graves, 162 Pac. 558, (Wash.), an action instituted to enjoin the enforcement of the oil inspection law of that state, the Supreme Court of Washington cited all, and reviewed many, of the cases hereinbefore referred to, and in sustaining the validity of the act, stood upon the cases of Bacon v. Illinois and General Oil Co. v. Crain, supra. While referring quite fully to Foote v. Stanley, supra, it intimated that possibly this court, in deciding that case, had overlooked its then recent decision in the Crain case. It further recognized that in common with the Minnesota Supreme Court it accorded Foote v. Stanley an entirely different construction than that given it by the Supreme Courts of Ohio and North Dakota.

While the Washington Court did not appear to lay any particular stress upon the point, it appears from the opinion that certain facts shown in that case might well have brought it within the doctrine of the Crain case, without involving any discussion of Foote v. Stanley.

We refer to that portion of the opinion in which it is said:

"According to the facts stated in the amended complaint in the present case, the oil was brought into this state for the purpose of sale. It is not alleged in the complaint that the inspection was sought to be made while it was still in transit, and before it came to a state of rest within the state. The inspection law, as above indicated, *only requires that the oil be inspected and tested before it is sold or offered for sale.* If the grain in the Bacon Case, while it was in the elevator in Chicago, was no longer in interstate commerce, and the oil in the General Oil Co. Case had lost its character of interstate commerce while in the tanks at Memphis, Tenn., it would seem to follow that a law which requires that the oil be inspected before it is 'sold or offered for sale' does not interfere with interstate commerce." (Italics ours.)

And again:

"The payment of the fee required by the oil inspection act is not an absolute and unavoidable demand, but is to be paid only upon the contigency that the oil is sold or offered for sale."

So that here again the act under consideration did not purport to act upon the product while in the original package and before transportation had ended.

As further bearing upon this question see Swift & Co. v. Ry. Co., 243 U. S. 281, 290, in which it was said:

"Swift & Company's cars were, therefore, though privately owned, still in railroad service while under lading. The cars while on the switch were on track owned by the Railroad Company. The 'transportation,' within the meaning of the Act to Regulate Commerce, had not ended."

In concluding this somewhat extended discussion of the in-

terstate commerce phase of the case we feel that we have demonstrated beyond question the interstate character of the commodity, for inspection (and not taxation) purposes *at the time inspection was contemplated and required by the act involved.*

And this irrespective of whether the criterion adopted for determining when the commodity loses its interstate character be delivery and sale in the original package, stated as in Brown v. Maryland, In re Rahrer, and Heyman v. Ry. Co., supra, or its becoming incorporated and mixed up and mingled with the common mass of property within the State, as stated in Leisy v. Hardin, Norfolk & Western Ry. Co. v. Sims, and General Oil Co. v. Crain, supra.

In the case at bar the inspection act operated upon the commodity while in the original package, before sale and, as we construe it, before delivery. While it is not contended that plaintiff in error contemplated sales in the original packages, save in few instances, it is contended that even though this court determines that the act operated *after* delivery, *but while the commodity remained in the original package,* the commodity still retained its interstate character and status until the original packages were broken up, so to spak, by the removal of the oil. We do not contend, and never have contended, that after delivery to plaintiff in error and while yet remaining in the original packages, the oil was not subject to a *general tax levied alike upon all personal property in the State,* and it is expressly stipulated in the record in this case (R. 148) that plaintiff in error had paid, all of the personal property taxes levied and assessed during the period in question; which must of necessity have covered, among others, oils in the tank cars on May 1st of each year.

But as hereinbefore strenuously urged, general tax laws, or cases wherein laws of that character were under consideration, have no application to this case; and this is the distinction that the Minnesota Supreme Court, equally with that of the State of Washington, failed to recognize.

Of course we admit that even if the inspection act in issue operated upon a product that was, at that time, interstate in character, the commerce clause of the United States Constitution was not violated by that fact alone and that no objection could be taken, provided the amount charged for such inspection was not more than was absolutely necessary to cover the expenses thereof. This brings us to a consideration of the reasonableness of the fees.

IV.

THE FEES PRESCRIBED WERE LARGELY IN EXCESS OF WHAT WAS ABSOLUTELY NECESSARY FOR THE OPERATION AND ENFORCEMENT OF THE ACT.

As stated in the Foote case, supra, as well as by the court in Willis v. Standard Oil Co., 50 Minn. 290, supra, while the amount of the inspection fee is left *primarily* to the legislature, yet, when the facts show that what was known to be an unnecessary amount has been levied, or what has proved to be an unreasonable charge *is continued*, then the court is obliged to act in the light of the facts shown and to give effect to the provision of the Federal Constitution prohibiting the collection by a State of more than is necessary for executing its inspection laws.

In view of the foregoing, it becomes pertinent to inquire how far the receipts shown in this case have been notoriously in excess of the amount even reasonably necessary for the operation and enforcement of the act in question, and to further inquire whether or not the legislature of Minnesota has at any time, by its inaction and refusal to reduce the fees in question, *or by any other act*, evidenced its intent to continue the excessive charge to the advantage and profit of the General Revenue Fund of the state.

Generally speaking, the legislature speaks and evidences its

intent through the medium of its enactments, construed in the light of then existing facts and circumstances of public knowledge and official record. Let us see how the legislative intent, in the respect indicated, has thus manifested itself during the period in controversy.

Giving the State the benefit of the doubt, and assuming, for argument, that when the legislature met, in January 1911, the Act had not been long enough in operation for the legislature to form an intelligent opinion as to the reasonableness of the fees imposed, we will consider the situation presented when the legislature met in January, 1913, the act having then been in operation some three years and a half.

The Inspection Act under consideration took effect on July 2nd, 1909. Among other things it provided (Sec. 3631) that at the end of each fiscal year (July 31st) the inspector should make an annual report to the governor; further (Sec. 3621,) that he should keep a record of all inspections made, showing the number and place of each, the number of packages inspected, the number of gallons contained therein, and the amount of fees therefor; and to that end he should require monthly reports from his deputies. Also that all such records should be open to the public.

It appeared from the records of the Oil Inspector, at the close of the year 1912, that the net number of barrels received, for which fees could be charged (exclusive of rebates for out-of-state shipments) had increased from 495,415 barrels for the year ending July 31st, 1910, to 611, 692 barrels for the fiscal year ending July 31st, 1912, *an increase in receipts of product of nearly 25% in two years.*

Section 76, Gen. Stat. Minn. 1913, provides, among other things, that on or before the 3rd day of each regular session of the legislature, the state auditor shall report to each House thereof an account of the receipts and disbursements *of the treasurer* during the preceding two years, the unexpended balances of the several appropriations, the amount remaining in the treasury

and the warrants issued and unpaid, if any there be. In compliance with this requirement there was issued, in printed form, in accordance with the usual custom, at the time the state legislature convened in January 1913, the official biennial report of the state auditor for the two preceding fiscal years terminating on July 31, 1912.

As pertinent to the matter under consideration this biennial report, in connection with that for the years 1909-1910, disclosed the following facts, also shown in the agreed statement of facts (R. 146, 147) viz:

That for the three years ending, respectively, on July 31, 1910, July 31, 1911, and July 31, 1912, *the net inspection fees*, over and above the cost of operating the inspection department (including inspector's salaries, fees of deputies, office expenses, clerk hire, etc.) had amounted to $50,336.78, of which $23,354.59, *or nearly 50% of the entire excess*, represented the excess receipts for the single year ending July 31, 1912. That the percentage of expense, incident to the operation and enforcement of the act, had decreasd, from 79% at the close of the fiscal year of 1910, to 63%, at the close of the fiscal year of 1912.

Furthermore: Notwithstanding the fact that Sec. 13 of the Act (G. S. Minn. 1913, Sec. 3631,) provided that all moneys collected under the Act should be credited to the "Oil Inspection Fund," and that for the payment of salaries of the state inspector, his deputies and office force and the expenses provided for in this chapter, the sum of $40,000, or so much thereof as may be necessary, was thereby annually appropriated out of said fund, it appearcd from the state auditor's biennial report of 1911-1912, as well as that for the years 1909-1910, that all fees collected thereunder *actually went into the General Revenue Fund of the state*, all expenses incident to the enforcement and operation thereof were drawn upon said General Revenue Fund and that all excess of receipts over and above disbursements,—amounting, as above stated, to over $50,000 for the three years ending July 31, 1912.

—were used, in the same manner as other taxes levied for the benefit of the state, in meeting and paying general expenses incident to the operation of the state government.

So that, at the time the legislature convened in July 1913, it was not only evident that the fees theretofore imposed by it had resulted, in the three preceding years, in bringing a *net revenue* to the state of over $50,000,—of which the rapidly ascending scale had produced nearly 50% thereof during the year immediately preceding,—and that the ratio of expense to income had decreased 16% during the three year period, but the legislature also stood charged with notice of the further and more important fact indicated by the report of the state auditor, viz: *that said excess of $50,000 had at all times been commingled with and formed part of the General Revenue Fund of the state and had been used, and was being used in defraying expenses in nowise incident to or connected with the operation or enforcement of the Inspection Act under consideration.*

With knowledge of the fact that the fees then in force had already created a surplus of over $50,000, and that such surplus had been diverted to other purposes, that the income from the act was steadily increasing, while the ratio of expense to income was steadily decreasing, *did the legislature of 1913 in anywise evidence any intention to remedy matters and to deprive the general revenue fund of the state of the sum thus annually, unlawfully, coming into it?* If so, the Minnesota Session Laws of 1913 fail to evidence any such intent or purpose.

On the contrary, it appears from Chapter 401, Laws Minnesota 1913, that as an evidence of its generous and friendly attitude towards the people of the state at large(for it is axiomatic that the ultimate consumer always pays the tax,) the legislature appropriated *from any moneys in the state treasury, not otherwise appropriated,* to be available for each of the fiscal years ending July 31, 1914, and July 31, 1915, $50,000 for maintenance of the oil inspection department, and $10,000 for ad-

ditional maintenance for the fiscal year ending July 31, 1913 only; thus conclusively evidencing its intention to still further augment the General Revenue Fund of the state, during the fiscal years of 1914 and 1915 with any and all surplus net receipts from the inspection in question. As the total receipts for the fiscal year ending 1912 had amounted to $63,354.35, and as it was clearly evident that the receipts were largely increasing each year, it is apparent that in thus fixing and designating the amount to be disbursed for the years in question for the conduct and operation of the department, the legislature not only realized, but was absolutely indifferent to the fact, that a substantial and good-sized net surplus would continue to go each year into the General Revenue Fund of the state.

With reference to the 1913 appropriation of the additional $10,000 for additional maintenance for the year ending July 31, 1913 only: At the time the legislature convened in January 1913, it appeared from the oil inspector's report for the year ending July 31, 1912, that there was a deficit of $8,564.96 in the matter of the enpense of enforcing the state law for the three prior years over and above the amount *annually appropriated therefor.* Note, not over and above the amount *collected.* In other words, that while the three *annual appropriations* from the general revenue fund had aggregated $120,000, the aggregate expense for those three years had been $128,564.96 *It will be borne in mind that the aggregate fees collected for the corresponding period had been* $170,874.56.

Of course if this had really been an inspection proposition, pure and simple, and not a revenue measure, the act would have *originally provided,* not that the sum of $40,000 (or any other specific amount) should be appropriated from the fund to meet the expenses, but that the *proceeds* of the act should be devoted to paying the expenses incident to its operation and enforcement; in which event, instead of there being a deficit to make up "*from*

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any moneys in the state treasury not otherwise appropriated," there would have been nearly $42,000 surplus.

In other words, the very fact that the legislature had to make a distinct appropriation from the revenue fund to cover this insignificant deficit, absolutely and conclusively showed that the net surplus of over $50,000, above referred to, had been appropriated and spent for purposes entirely foreign to the act in question.

We do not of course know how it will appear to this court, but if evident intent counts for anything, and if that intent, so far as it applies to a legislative body, is to be fairly ascertained by a consideration of its acts in the shape of legislative enactments, then it clearly appears to us that it was absolutely up to the legislature of 1913 to reduce the inspection fee and that it not only failed to do so, but unmistakably evidenced its intention, especially manifest in the light of the facts then known to it, of having the State continue to derive a substantial *revenue* from the operation of the act.

While perhaps not exactly germane to the issue herein involved, which covers a period from February 1913 to April 1915, yet, as it was incidentally referred to in the opinion of The Minnesota Supreme Court in the Bartles case, and evidently was taken into consideration in arriving at the result, we will pause for a moment to consider the magnanimous action taken by the Minnesota legislature of 1915.

At the time *that* body convened it was evident from the state auditor's official report that the *net surplus fees*, over and above expenses of operating the department, *and similarly placed to the credit of the General Revenue Fund of the state, had* amounted to $25,538.76 for the fiscal year ending July 31, 1913, and to $29,098.34 for the fiscal year ending July 31, 1914, and that in addition there was $15,000 in fees that had been charged during that period, to solvent concerns, but was still uncollected, (R. 146-147), *making a total net surplus revenue to the state for*

the two fiscal years of 1913 *and* 1914, *amounting to* $69,637. It was further evident that the number of barrels inspected, exclusive of those subsequently shipped out of the state, had increased from 611,692 barrels for the fiscal year ending July 31, 1912, to 893,538 barrels for the fiscal year ending July 31, 1914, *an increase of over* 45%. It was further evident that the ratio of expense to income was slightly over 60%.

Now the legislature of 1915 knew, as above stated, that the net number of barrels, subject to inspection fee, received during the year ending July 31, 1914, was 893,538,—these being barrels of 55 gallons each, or equivalent to 49,144,590 gallons. The amendment of 1915, Laws Minn. 1915, Chap. 271, provided that 50 gallons should be considered a barrel in computing the inspection fees and that when inspected in tank cars, 7c should be charged for each 50 gallons thereof. On the basis of 50 gallons to a barrel, the receipts for the fiscal year ending July 31, 1914, would have amounted to 982,892 barrels, which, computed at the rate of 7c per 50 gallon barrel would have yielded a gross inspection fee of $68,802.44; with knowledge of which fact the 1915 legislature stood charged. It was thus evident *to that body, at that time*, that on the basis of the quantity imported for the year ending July 31, 1914, figured at the new rate of 7c per 50 gallon barrel, taken in connection with the fact that the 1913 legislature had only appropriated $50,000 to the expense of running the department for the fiscal year ending July 31, 1915, that even figured at the *new rate* and on *the former years' receipts*, there would be a net surplus to go to the State Revenue Fund of over $18,000.

Knowing, as the state auditor's reports clearly showed, that from the year ending July 31, 1909, to the end of the fiscal year ending July 31, 1914, a brief period of five years, *there had been practically* $120,000 *net surplus fees paid into the General Revenue Fund of the state and disbursed in payment of general state expenses*, (R. 146-147) and further being charged with

knowledge of what would be a self-evident fact to any one, apart from any tabulated statement of figures, viz: that the importation of illuminating oil, gasoline and petroleum products into the state was yearly increasing at a tremendous ratio,—the increase for the four years from July 31, 1910 to July 31, 1914 being 80%,—the action of the legislature of 1915, in the respect indicated, certainly fell far short of evidencing any intent on its part to end this perpetuation of a revenue measure under the thin disguise of an inspection act. It does appear, however, that under the appropriation act for 1915, Laws Minn. 1915, Chap. 374, the legislature did raise the appropriation for the fiscal years ending July 31, 1916, and July 31, 1917,—*but still "from any moneys in the state treasury not otherwise appropriated."*—from $50,000 to $55,000, and, in addition, appropriated an extra $10,000, available at once. So that, out of $120,000 that had gone to the state *as pure net revenue* during the preceding five years, the legislature had, by specific appropriation, taken altogether $20,000 to make up for deficits, still leaving practically $100,000 that had been collected under the guise of an inspection act, and appropriated and disbursed as part and parcel of the general funds of the state. Perhaps, as remarked by the Minnesota Court in the Bartles case, the action of the 1915 legislature, viewed in the light of knowledge of all of the facts with which it was charged, evidenced a good faith endeavor to bring about a proper relation between receipts and inspection fees, but in view of the foregoing computations possibly we may be pardoned for not viewing it in that light.

Moreover, in the decision in the Bartles case, the Minnesota Court stated that reducing the fee from 10c to 7c amounted to a reduction of 30%,—evidently losing sight of the fact that the number of gallons to the barrel was reduced from 55 to 50,—thus making the reduction amount to but 23%.

There is another provision in the inspection act herein under consideration that also has an important bearing on this ques-

tion of legislature intent; we refer to the provision contained in Section 3630 to the effect that "All kerosene, oil and gasoline inspected in other states where the inspection requirements are as high as those required herein, may be admitted *without additional inspection, on payment of the fees required by this act*"—clearly providing for the collection of a fee where the rendition of no service whatsoever was even contemplated.

But the Minnesota Court, in the Bartles case and in this case, further intimated that the net excess of fees, taken from year to year, were not sufficient in amount to challenge the attention of the court.

It is true that in the Jackman case, in North Dakota, supra, as well as in the Castle case in Ohio, supra, the net excess fees amounted to more than those received in Minnesota under the operation of the 1909 act, but it is a significant fact that the tabulation contained in the opinion in the Ohio case shows a decidedly smaller expense item, than has obtained in Minnesota, notwithstanding the fact that the amount actually collected in Ohio during the period indicated, at the rate of 7c per barrel of 50 gallons, averaged over 50% more than the amount collected in Minnesota.

However that may be, the yearly net surplus involved and under consideration in the Foote case was held by this Court to be of sufficient importance and amount to not only be noticeable, but to stamp the measure there under consideration as a revenue measure and not as an inspection act, and we are confident that this court will apply the same criterion to the yearly excess shown by the record in the case at bar.

The rule, as above stated, is that when it appears that more *is being levied* than is absolutely necessary, or an unreasonable charge *is being continued*, and the legislature has had the opportunity to rectify matters but has absolutely failed to do so, then the court *is obliged* to act.

Now eliminating the legislature of 1911 from consideration, it is evident that the legislature of 1913 *knew that over* $50,000 *levied as oil inspection fees, had gone into the revenue fund of the State, during the preceding three years and that it represented, beyond question or dispute, an amount over and above what was necessary to execute the law.* There cannot be any doubt about this as the Official Legislature Manual "Compiled For The Legislature of 1913," contains the following on pages 268: "Oil Inspection.' An inspector of illuminating oils is appointed by the governor and the inspector designates his deputies in the various counties. *All fees are paid into the treasury*, and a salary is paid the inspector and his deputies."

The 1913 Legislature was equally cognizant of the other significant conditions hereinbefore set forth. In the light of all this, what did it do? NOTHING.

Had it sought to remedy matters at that time, no question could have arisen, but when it thus deliberately and plainly indicated its purpose to not only ignore the substantial revenue *thus unlawfully obtained*, but to further perpetuate this form of taxation, what is the duty of this court under the rule laid down in Foote v. Stanley? Can it sustain the position taken by the Minnesota Court and say that because the net excess (over and above what was necessary,) had only amounted to $10,623 in 1910, $16,358 in 1911, and $23,354 in 1912, (although constantly increasing), the legislature was excusable in not acting?

The figures and computations here given, relative to the practical operation of the Minnesota Act, were included and set forth in our brief in the Supreme Court of that State, *in extenso*, but that Tribunal, while fully recognizing that the net surplus went to enrich the general revenue fund of the State, considered the amount as too small to be worthy of attention.

If $10,000 is too small to justify action, how about $16,000? If $16,000 be too small, how about 23,000? Where is the line of demarcation at and beyond which this court will set its seal

of disapproval?

In Foote v. Stanley, supra, this court held that a net excess of $22,010 in 1909, and $28,680 in 1910, was sufficient to call for action on its part; the highest tribunal of the State having failed to act.

Will this court ignore the fact that the Minnesota Legislature of 1913 *failed to act, after the act had been in operation for three and a half years*, knowing as it did at the time that the State was receiving a substantial revenue to which it was not lawfully entitled, and, moreover, that its failure to act must of necessity perpetuate this unlawful condition? How have the courts of North Dakota, Ohio and Kansas met similar conditions?

It is a matter of common knowledge that Minnesota in common with many others, has been afflicted in the past with numerous so-termed "inspection laws" that have been a stench to the nostrils of people acquainted with the true purpose and working of the acts in question; not only because they were enacted solely to secure and increase "patronage," but because of the excessive fees imposed, considering the reasonable and proper cost of the service rendered.

In the opinion in the Bartles case the Minnesota Court went back to the year 1903 for the purpose of striking an average ratio of expenses to receipts, and found that ratio to average 82%. It does not appear to us, in view of the rule laid down in the Foote case,—to the effect that while it is *primarily* for the legislature to act, yet, if that body fails to act, then it is up to the court to act,—that the Minnesota Court was justified in going back to any such date. As said by this court in Minnesota v. Barber, 136 U. S. 313,319:

> "There may be no purpose upon the part of a legislature to violate the provisions of that instrument" (the Constitution) "and yet a statute enacted by it, under the forms of law, may *by its necessary operation*, be destructive of rights granted or secured by the Constitution.

In such cases, the courts must sustain the supreme law of the land by declaring the statute unconstitutional and void."

So, in the case now before the court, it is apparent that in failing to act prior to 1915 (if indeed it can be said to have acted at that time,) the legislature had no right to consider the matter of receipts and disbursements representing a period far anterior to that to which its consideration should have been directed.

Furthermore, we think it pertinent at this time to call attention to the size of the expense item incident to the operation and enforcement of this act which, in comparison with that of that of the other states before us appears to be out of all proportion. Thus in the Ohio case of Castle v. Mason, we notice that the disbursement for the year 1913 was only $42,-558.00, involving the collection of $130,607.00 figured at 7c per 50 gallon barrel; while the record in the case at bar shows that it cost Minnesota for the same year $47,117.62 to make a collection of $72,656.38, predicated upon a 10c fee per 55 gallon barrel. In 1909 the Ohio department collected $88,037.00 at a cost of approximately $37,000.00, while in 1914 it cost Minnesota $52,467.00 to collect merely $81,565.00.

In State ex rel. Brewster, Atty. Gen. v. Cumiskey, State Inspector of Oils, 155 Pac. 47, decided by the Supreme Court of Kansas, on Feb. 12, 1916, holding void that section of the Kansas Oil Inspection Law providing for an inspection fee of 10c per barrel, it appears, among other things, that during the year 1913, there were inspected 834,210 barrels of gasoline and kerosene, a number but slightly less than that inspected in Minnesota during the year ending July 31, 1914, but that the Kansas collection expense was only $18,248.00 as against $52,467.00 for Minnesota. The Kansas expense for the years 1914 and 1915 was even less. Furthermore we think that a great deal that is said in the opinion in the Kansas case is especially relevant to

the situation obtaining in Minnesota. We quote:

> "Before 1909 oil inspection was very profitable to the state. The net profits for the year 1906 were $18,011.95. For 1907 the net profits were $19,990.78. For 1908 the net profits were $20,210.00.
>
> "The law of 1909 not only afforded a large revenue to the state in excess of the cost of inspection, but it provided positions for the politically faithful who could be depended on 'to look after things' in their respective localities. Year after year the state inspectors' reports pointed with pride to a substantial increase in net revenues to the state over preceding years. The law of 1913 corrected the political evils, left the service as adequate and efficient as it had been, but clung to the profit to the treasury."

It is noticeable that the Kansas court primarily stamped its seal of disapproval upon the 10c rate and that the Supreme Court of Ohio viewed with equal disapproval the results accruing from the 7c rate.

In conclusion on this phase: While we recognize the fact that courts act with reluctance in the matter of declaring a statute void and unconstitutional, yet in light of the facts and circumstances clearly evidenced by the foregoing consideration and analysis, we do not think that this court would be justified in treating the inaction of the 1913 Minnesota Legislature as immaterial or inconsequential. Under the rule laid down by it, it was primarily up to the 1913 legislature to act if the facts and circumstances showed that more than was fairly absolutely necessary was being collected. The existence of this condition at the time the 1913 legislature convened admits of no question and it it difficult to see how the situation presented at that time can be ignored and extenuating conditions and circumstances be found in the belated attempt made, in the respect indicated, by the legislature of 1915. Whatever may be the result of the re-

duction made by the body last named, it stands undisputed that the general revenue fund and treasury of the state had been enriched to the extent of over $100,000 from the proceeds of this inspection act during the period from July 1909 down to July 1914. These figures are not speculative, as was the situation in the Red "C" Oil Co. case, but actual, as was the situation in the Foote case. If the legislature of 1913 is to be held to have been justified in ignoring the fact that the measure in question had already brought over $50,000, *as revenue*, into the coffers of the state, and if it made no reduction whatsoever in fees, would continue to thus enrich the public treasury for the next two years at least, and if the legislature of 1915 is to be held equally justified in having ignored the figures plainly accessible to it, and to have viewed with complacency the fact that up to that time the treasury of the state had been enriched to the extent of over $100,000 *net revenue, where is the line to be drawn?* If $20,000 a year excess is not to be viewed as worth considering, *even though shown to be a continuous proposition*, what is the figure which this or any other court will adopt as a limit of excess in a matter of this character?

Viewed in the light of the foregoing considerations the act in question will not stand the test.

This brings us to a consideration of the efficacy of the gravity test as applied to gasoline.

V.

ASSIGNMENT NO. 8.

AS APPLIED TO GASOLINE THE ACT DID NOT CONSTITUTE A VALID EXERCISE OF THE POLICE POWER, IN THAT IT FAILED TO PROTECT OR SAFEGUARD THE PUBLIC HEALTH, MORALS, SAFETY OR CONVENIENCE.

Reduced to its lowest terms the testimony of Prof. Frankforter and Mr. Walker for appellant, and that of Mr. Abbott and

Mr. Bein for respondent, relating solely to gasoline, was practically a unit on the following propositions:

1. That the gravity test alone was of no value, and furnished no evidence or indication whatsoever of the quality, or volatile character, of the product *except* when applied to absolutely pure, straight-run, unblended gasoline. (R. 41, 50, 51, 59, 110, 114.)

2. That "blended" gasoline as used and referred to in the testimony of these witnesses, had reference to a product produced by mixing, at the refinery, in varied proportions, kerosene oil with what is known to the trade as "casing-head" gasoline, the latter being highly volatile in character. That by thus mixing or blending on a 50-50 basis, kerosene having a specific gravity of 45, with casing-head gasoline having a specific gravity of 80, the resultant product would show a gasoline having a specific gravity, under the Baume hydrometer test, of about 62; but that this gravity test would absolutely fail to show, or to indicate in any manner whatsoever, the fact that the product thus tested *was* made up of a blend or mixture. (R. 51).

3. That the blended product could be purchased from the refinery at a much lower price than the straight-run article, and that such blended product had been in common use and sale in the state for ordinary and general commercial uses and purposes, during the past three or four year. (R. 57, 58).

4. That the gravity test alone, when applied to gasoline commercially sold and used in the state for the past few years, would not give a correct indication of its susceptibility to explosion (R. 59), when mixed with air for the reason that a blend of kerosene and gasoline of the character above indicated, might show a comparatively low gravity but, by reason of the high volatile character of the casing-head gasoline, would give off more copious fumes or vapors when exposed to air, than would be true in the case of a straight-run product. (R. 52.)

5. That, as above indicated, the blended product was more dangerous than the straight-run, because of the presence in the

casing-head gasoline of the very high boiling liquids that would vaporize very readily.

6. That the Minnesota Legislature had been informed, some three years ago, by Prof. Frankforter, Dean of the Department of Chemistry of the State University, that the gravity test, as applied to gasoline, was not reliable. (R. 48).

The foregoing indicates, in a nutshell, that the test for gasoline prescribed by the act is only of any value whatsoever when applied to a straight-run product, and solely on the assumption that the product thus tested is of that character. On the other hand, it wholly and absolutely fails to disclose, or in anywise indicate, whether the product thus tested *is* a straight-run product, or a blended product, and, consequently, the real proportion and gravity of the highly volatile mixture and of the heavier and cheaper oils in the blend. In other words, *the gravity test wholly and absolutely fails to protect the public against the importation, sale and use of a blended or adulterated product and only serves to indicate the gravity of a straight-run gasoline; a function of no practical value.*

In the opinion of the four dissenting Justices, in Pabst Brewing Co. v. Crenshaw, 198 U. S. 17, 34, it was said that "the object of inspection laws is to require such examination of the thing inspected as will *insure* to the public a safe and wholesome article."

The particular form of inspection then under consideration in the Pabst case provided, in the case of beer shipped in from other states, for the furnishing of a sworn affidavit of the manufacturer of the beer, or some other reputable person having actual knowledge of the composition thereof, that no materials other than those designated by the act were used in the manufacture of the same, and that upon the receipt of said affidavit, the inspector should label the packages in question, for which service he should receive like fees as those imposed upon the manufacturers of beer and malt liquors

in the state of Missouri. On this point the dissenting Judges held that the requirement and acceptance of an affidavit, in lieu of an actual inspection, made the manufacturer or his agent the sole judge of whether the liquor contained only the ingredients allowed by law, and that the court could not treat this as a *bona fide* inspection for the reason that to justify an inspection in law there must be an inspection in fact,—undoubtedly referring to an inspection of such character as would of necessity correctly and truly indicate the quality and character of the article inspected. The court further stated that the character of inspection indicated was purely perfunctory and accomplished nothing for the protection of its citizens.

In Vance v. Vandercook Co. (No. 1), 170 U. S. 438, the inspection act before the court provided, briefly, that any resident of South Carolina who intended to import for his personal use and consumption any intoxicating liquors from any other state or foreign country, should first certify to the Chemist of the South Carolina College the quantity and kind of liquor proposed to be imported, together with the name and address of the firm from whom it was desired to purchase the same, accompanying each certificate with a statement that the proposed consignor had been requested to forward a sample of such liquor to said State Chemist. That upon the receipt of said sample the chemist should immediately proceed to test the same, and if it was found to be pure and free from any injurious or deleterious matter, he should issue a certificate to that effect and mail the same to the proposed consignor at the latter's place of business. That thereupon the consignor should cause such certificate to be attached to the package containing the liquor when it was shipped into the state, and any such package not containing a certificate of the character indicated should be seized and confiscated.

The court naturally held that an inspection of this charac-

ter could not be said to be a valid manifestation of the police power of the state, as it was obvious that the inspection of a sample sent in advance was not in the slightes degree an inspection of the goods subsequently shipped in to the state, for the reason that the sample might be one thing, and the merchandise thereafter coming in, another.

While perhaps not entirely parallel with the inspection act now under consideration, the reasoning of the court in the Vandercook case is applicable in that it indicates that the inspection required must be of such character as to fairly evidence the quality and ingredients of the article actually imported.

Without taking the space to set out in full the general requirements of a valid inspection act, with which this court is quite familiar, we can possibly convey to the court our precise views on this phase of the question by a pertinent illustration.

A barrel of gasoline is purchased and delivered and indicates on the outside thereof that it contains "Gasoline" of a specific gravity of 60-62 degrees, and further contains the words "unsafe for illuminating purposes." Now the purchaser is notified by this branding that the receptacle contains gasoline and that the product in question is unsafe to be used for illuminating purposes. We do not exactly know what this means, as it is a matter of common knowledge that gasoline is used for illuminating purposes, both while contained in the reservoir of an ordinary portable lamp, of the Pitner style, as well as in large tanks, in connection with a regular gasoline lighting plant of the Detroit or Northern type. However this may be, we assume that the words "unsafe for illuminating purposes" are intended to convey the information that the product is not to be used in an ordinary kerosene lamp.

But under the unanimous testimony of the four witnes-

ses above named, the purchaser derives no further information of any value from the brand or mark on the receptacle for the reason that the words "specific gravity 60-62" fail to indicate whether the product purchased is a pure, unblended, straight-run article, or an adulterated or blended mixture. In other words, whether if properly analyzed, by the distillation test, every pint of the liquor would show the gravity indicated, or, on the other hand, the analysis would show that half of the product was of the "casing-head" variety and the other half nothing but ordinary kerosene oil.

It occurs to us that the test that should be applied to gasoline, to be of any practical value whatsoever to the purchaser, should be a test *that would fully and truly indicate exactly what the purchaser was getting* and not leave him in a position where he was absolutely ignorant in all respects save that the commodity was called gasoline and was unsafe for illuminating purposes.

The practical reasons for the necessity of the requirements suggested are at once apparent when this court comes to consider matters of common knowledge. For instance: Having purchased a barrelful of gasoline purporting to be 60-62 gravity, the purchaser might reasonably assume that it was perfectly safe and proper to use a gasoline of this low gravity in an ordinary portable gasoline lamp, which assumption would be wholly justified provided the product was straight-run and unblended. If, however, it happened to be the result of a blending of highly volatile casing-head gasoline with a cheap, low-grade kerosene (which the gravity test would not disclose,) the use of that product in the lamp referred to would not only be attended with danger, but would be absolutely unsatisfactory for the reason that the heavier, low-grade kerosene would settle in the barrel and the higher gravity casing-head gasoline would come to the top; consequently the half of the product first drawn from the barrel would be inferior in quality and the other half of altogether too high specific gravity for the purpose intended. Moreover, the testi-

mony of the witnesses in question further indicates that if this product happened to be of blended character, *its susceptibility to explosion* would be far greater than would be the case with a straight-run product of the same gravity; thus possibly resulting in the purchaser being thrown off his guard, on the assumption that he is handling and dealing with a comparatively low gravity gasoline.

Of course it is probable, as testified to by one or two of the witnesses, that taken with reference to its use in automobiles of the present type, the motion of the car would keep the blend so well mixed and assimilated that no bad effects would result therefrom beyond the unusual accumulation of carbon in the cylinders, but that situation or condition would not hold good where the product was contained in a stationary tank or reservoir, and where it was from time to time more or less exposed to the air in which event the highly volatile casing-head gasoline would unquestionably vaporize more readily, leaving the coarse residuum. However, and what appears to us to be more to the point, in either or any of these cases, irrespective of the results actually obtained, *the purchaser is not apprised of the true quality or character of the product he buys*, which he most certainly should be, considering that in the last analysis he undoubtedly and unquestionably stands the cost and expense incident to the inspection in question.

All of the four expert witnesses who testified on this phase were unanimous on the point that *the distillation test*, so called, was the proper test for gasoline and *was the only test that would correctly indicate and disclose whether the product in question was straight-run, or blended or adulterated, and if the latter, the true proportions of each ingredient therein contained.*

We are aware that in the case of Red "C" Oil Co. v. North Carolina, 222 U. S. 380, this court stated that the conceded fact that in 35 states in the Union, Oil Inspection Laws were in force was sufficient to adversely dispose of the contention that oil

was not a proper subject of inspection. The act then under consideration only covered the inspection of kerosene, and we do not understand that it had any reference to gasoline, and the point urged by plaintiff in error had simply to do with the danger of explosion from the use of kerosene oil.

As above indicated, we have no quarrel with an inspection measure, operated at a proper and reasonable cost, *which is in truth an inspection measure*, and which, as a result of the operation thereof, truly and correctly, or even in some manner, indicates to the purchaser what he is buying, but we most emphatically maintain, in view of the testimony given in this case, that the inspection provided by the act, with reference to gasoline, does not furnish this information and protection to the ultimate purchaser and consumer, and that consequently so far as it applies to the product last named, it cannot be upheld and enforced as a police regulation.

VI.

IF NOT SUSTAINED AS AN INSPECTION MEASURE, IT IS VOID AS A TAX MEASURE, UNDER THE CONSTITUTION OF THE STATE.

Section 1, Article 9, of the Constitution of the State of Minnesota provides, in part, that

> "Taxes shall be uniform upon the same class of subjects."

We heartily agree with the opinion of the State, as expressed in its brief in the Bartles case, viz:

> "It is obvious that the oil inspection law would not stand as a tax law, as was said in Willis v. Standard Oil Co., 50 Minn. 290, neither could it now stand as a tax law under the present constitution which was amended in 1906.

In Willis v. Standard Oil Co., supra, the court said:

"It is also objected that the act is one levying a tax, and not a police regulation. Of course, under the constitutional provision requiring taxes to be as nearly equal as may be, and to be levied on a cash valuation, the law could not be sustained as a tax law. It can only be upheld as an exercise of the police power of the state; as intended to be just what it purports to be,—an inspection law requiring to be inspected articles which, from their nature and use, may be dangerous to the lives or property of the people of the state. The imposition of fees for inspection, if intended as a mode of raising general revenue for the state, could not be sustained. It could be upheld only as a mode of making the business of dealing in oils pay the expense of its proper police regulation." (P. 297.)

CONCLUSION.

In what has heretofore been said we feel that we have established the following facts and principles:

First: That the true intent and purpose of the act in question, viewed in the light of its various provisions, and with due consideration to the objects and results sought to be accomplished, is to require inspection of the commodities in question prior to the unloading thereof from the tank cars in which they are transported and received.

Second: That these commodities, at the time such inspection is required to be made under the act, and so far as the application of the act is concerned, are in interstate commerce, and that the inspection act operates upon them as subjects thereof.

Third: That if the facts presented in the given case clearly show that what was known to be an unnecessary amount has been levied, or that what is proved to be an un-

reasonable charge has been continued, then it becomes the duty of the courts to act, in the light of these facts, and to give effect to the provision of the Federal Constitution, prohibiting the collection by a State of more than is necessary for executing its inspection laws.

Fourth: That at the time the Minnesota Legislature of 1913 convened, the act had been in operation for a sufficient length of time to acquaint that body,—possessed as it was of all data concering the operation of thesame—with knowledge of the fact that the fees imposed were so excessive and unreasonable as to result in a substantial and constantly increasing net excess of receipts over disbursements being annually placed in the general revenue fund of the State, and used for purposes in nowise connected with, or incident to, the enforcement of the act.

Fifth: That while, under the decisions of the courts it was primarily for the 1913 Minnesota Legislature to have acted with reference to such excess, upon its failure to do so it became the duty of the Minnesota Court to take action upon proper application; and that upon its refusal to act in the respect indicated, plaintiff in error herein is entitled to relief in this court.

For the reasons hereinbefore stated the act under consideration should properly be adjudged unconstitutional and void and the judgment of the Minnesota Supreme Court be reversed.

Respectfully submitted,

NATHAN H. CHASE,

CLIFFORD THORNE,

Counsel for Plaintiff in Error.

Office Supreme Court, U. S.
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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. [redacted]74

PURE OIL COMPANY,
Plaintiff in Error,

vs.

THE STATE OF MINNESOTA,
Defendant in Error.

In Error to the Supreme Court of the State of Minnesota.

CLIFFORD L. HILTON,
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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 785.

PURE OIL COMPANY,

Plaintiff in Error,

vs.

THE STATE OF MINNESOTA,

Defendant in Error.

In Error to the Supreme Court of the State of Minnesota.

STATEMENT.

A writ of error brings to this court a record of an action prosecuted to final judgment in Minnesota. State of Minnesota v. Pure Oil Company, 134 Minn. 101. The final judgment was to the effect that the plaintiff in error must, at the rate of 10 cents per barrel, pay $9,191.20 for the inspecting and branding, between February 1, 1913, and April 23, 1915, of 9914 barrels of oil and 81,998 barrels of gasoline. The State in support of its claim relies upon the following statutory provisions, namely: G. S. 1913, Sections 3619-3632, which are set forth in full in the Appendix hereto.

ARGUMENT.

The plaintiff in error objects to the right of the State to recover under these statutes on three grounds, to-wit: (A) That the inspection of the oil and gasoline in question was an unlawful interference with interstate commerce; (B) That the gravity test prescribed in connection with the inspection of gasoline is not efficient as legitimate police regulation; (C) That the Minnesota statute is a revenue law clothed in the guise of an inspection act.

These objections will be taken up in their order.

A.

INSPECTION UNDER THE MINNESOTA LAW WAS NOT AN UNLAWFUL INTERFERENCE WITH INTERSTATE COMMERCE.

The plaintiff in error, hereinafter called "Oil Company," at the times in question conducted a jobbing and retail business in oils and gasoline at Minneapolis and St. Paul, where it had storage facilities. (Record, pp. 24, 25, 100 and 115.) Gasoline and oil were shipped to the Oil Company f. o. b. refineries in tank cars from points outside Minnesota. Upon arrival at Minneapolis or St. Paul, the railroads made delivery at the plants of the Oil Company where the contents of the tank cars were received and by the Oil Company pumped into storage tanks set apart for the various grades. The gasoline and oil had no further definite destination. They were in Minnesota mixed with other gasoline and oil of a like quality and there held for sale. They became a part of the general mass of property within the State. They were drawn

from the storage tanks and distributed by means of tank wagons or other containers. (Record, pp. 22, 23, 24 and 25). When shipped out of Minnesota, the inspection charges were rebated. (Record p. 149.)

Minnesota General Statutes for 1913, Section 3628, provides:

> "Oil or gasoline shipped in tanks or tank cars shall not be unloaded until it is duly inspected, providing such inspection is made within twenty-four hours, after the arrival and notice setting forth the number of the car and date of its arrival has been given the inspector. Each fifty-five gallons or major fraction thereof shall be considered a barrel in computing the inspection fees. No further inspection shall be necessary, and, if such oil be afterwards placed in barrels, the inspector shall brand without extra charge one such barrel for each fifty-five gallons thereof."

The Minnesota Supreme Court holds that the act under consideration contemplates inspection in the original tank cars before they are unloaded.

The "original package" test for determining when an article ceases to be the subject of interstate commerce is not applicable to cases of this character. Savage v. Jones, 222 U. S. 501.

The gasoline and oil inspected in this case were not when inspected the subjects of interstate commerce. They had lost their character as such.

In General Oil Co. v. Crain, 209 U. S. 211, we find a Tennessee oil inspection case. The method of handling the oil in the Tennessee case was identical with the method employed by the Oil Company in Minnesota. With reference to the oil at the time of the inspection being prop-

erty which was the subject of interstate commerce, Mr. Justice McKenna, at pages 230 and 231, said:

> "The company was doing business in the State, and its property was receiving the protection of the State. Its oil was not in movement through the State. It had reached the destination of its first shipment, and it was held there, not in necessary delay or accommodation to the means of transportation, as in State, etc., v. Engle, supra, but for the business purposes and profit of the company. It was only there for distribution, it is said, to fulfill orders already received. But to do this required that the property be given a locality in the State beyond a mere halting in its transportation. It required storage there—the maintenance of the means of storage, of putting it in and taking it from storage. The bill takes pains to allege this. 'Complainant shows that it is impossible, in the coal oil business, such as complainant carries on, to fill separately each of these small orders directly from the railroad tank cars, because of the great delay and expense in the way of freight charges incident to such a plan, and for the further reason that an extensive plant and apparatus is necessary, in order to properly and conveniently unload and receive the oil from said tank cars, and it would be impracticable, if not impossible, to have such apparatus and machinery at every point to which complainant ships said oil.'
>
> This certainly describes a business—describes a purpose for which the oil is taken from transportation, brought to rest in the State and for which the protection of the State is necessary, a purpose outside of the mere transportation of the oil. The case, therefore, comes under the principle announced in American Steel & Wire Co. v. Speed, 192 U. S. 500.
>
> We have considered this case so far in view of the cases which involve the power of taxation. It may be that such power is more limited than the power to enact inspection laws. Patapsco Guano Co. v. Board of Agriculture, 171 U. S. 345, 356. The difference, if any exists, it is not necessary to observe. The cases based on the taxing power show the contentions of plaintiff in error are without merit; in other words,

show that its oil was not property in interstate commerce."

In the case of Susquehanna Coal Co. v. South Amboy, 228 U. S. 665, coal was shipped from Pennsylvania to South Amboy, New Jersey, where it was unloaded on the docks and there reloaded from the docks into vessels or cars. At page 669, Mr. Justice McKenna, speaking for the court, said:

> "The coal, therefore, was not in actual movement through the State; it was at rest in the State, and was to be handled and distributed from there. Therefore, the principles expressed in General Oil Co. v. Crain, 209 U. S. 211, and Bacon v. Illinois, 227 U. S. 504, are applicable to it. The products in neither of those cases were destined for sale in the States where stored; the delay there was to be temporary, a postponement of their transportation to their destinations. There was, however, a business purpose and advantage in the delay which was availed of, and while it was availed of, the products secured the protection of the State. In both cases it was held that there was a cessation of interstate commerce and subjection to the dominion of the State."

The Chicago, Milwaukee & St. Paul Ry. Co. v. Iowa, 233 U. S. 334, presents a case where the court had under consideration shipments of coal in carload lots. The shipments originated in Illinois and the loaded cars were left on the track at Davenport, Iowa. The owners of the coal re-shipped from Davenport, using that place as a distributing point. In most instances, the coal was sent out of Davenport in the same cars in which it arrived. At pages 342, 343 and 344, Mr. Justice Hughes said:

> "The Railroad Commission held that the transportation desired from Davenport was a purely intrastate service, saying: 'Under the admitted facts, the city of Davenport became a distributing point for coal

shipped by the consignor. The certainty in regard to the shipments of coal ended at Davenport. The point where the same was to be shipped beyond Davenport, if at all, was determined after the arrival of the coal at Davenport. The coal was under the control of the consignee and he could sell it in transit or at Davenport, or reconsign it to a point on respondent's railway, or any other railway, at his own discretion.' Upon the trial of the present suit in the state court, the State introduced in evidence the proceedings, decision and order of the Commission, and without further evidence both parties rested. The Supreme Court of the State took the same view of the facts that the Commission had taken and accordingly held that the shipments were intrastate. The court said that the facts showed that the coal was originally consigned to the coal company in Davenport, that it was there held until sales were made, that the consignee had taken delivery, paying the freight to the initial carrier and assuming full control. 152 Iowa, 317, 319.

The record discloses no ground for assailing this finding. It is undoubtedly true that the question whether commerce is interstate or intrastate must be determined by the essential character of the commerce and not by mere billing or forms of contract. Ohio Railroad Commission v. Worthington, 225 U. S. 101; Texas & N. O. R. R. Co. v. Sabine Tram Co., 227 U. S. 111; Railroad Commission of Louisiana v. Texas & Pacific Ry. Co., 229 U. S. 336. But the fact that commodities received on interstate shipments are re-shipped by the consignees, in the cars in which they are received, to other points of destination, does not necessarily establish a continuity of movement or prevent the reshipment to a point within the same State from having an independent and intrastate character. Gulf, Colorado & Santa Fe Ry. Co. v. Texas, 204 U. S. 403; Ohio Railroad Commission v. Worthington, 225 U. S. 101; 109; Texas & N. O. R. R. Co. v. Sabine Tram Co., 227 U. S. 111, 129, 130. The question is with respect to the nature of the actual movement in the particular case; and we are unable to say upon this record that the State court has improperly characterized the traffic in question here."

Under the doctrine and the reasoning in the cases cited, the State of Minnesota contends that the gasoline and oil in question when inspected were not the subject of interstate commerce. The case of Foote v. Maryland, 232 U. S. 494, relied upon by the Oil Company to establish the interstate character of the gasoline and oil in question is not controlling because in that case it was apparently assumed by the court and counsel that the oysters at the time of inspection were the subject of interstate commerce. This court did not actually so decide. At any event, the later case, viz: Chicago, Milwaukee & St. Paul Railway Co. v. Iowa, is controlling.

B.

THE MINNESOTA LAW (G. S. 1913, SECTION 3625) WHICH PROVIDES THAT GASOLINE SHALL BE TESTED AS TO GRAVITY AND BRANDED "UNSAFE FOR ILLUMINATING PURPOSES"; AND THAT EVERY BARREL OR PACKAGE CONTAINING GASOLINE SHALL BE BRANDED WITH THE WORD "GASOLINE" IN RED LETTERS AND THE GRAVITY STENCILED THEREON, IS A LEGITIMATE POLICE REGULATION INTENDED TO PROTECT THE PUBLIC SAFETY AND PREVENT IMPOSITION UPON THE PURCHASING PUBLIC IN MINNESOTA.

It is true there is expert testimony to the effect that the gravity test as applied to blended gasoline alone is of little value for the purpose of determining quality or of volatile character. But the evidence in this case discloses that when gasoline was received in tank cars, after the cars were spotted on the unloading tracks, the contents were tested as to gravity; storage tanks were set apart and used for gasoline of a certain specific gravity (Rec-

ord, p. 23); the contents of tank cars were pumped into storage tanks containing the same specific gravity of gasoline (Record, pp. 24 and 67); as desired, the gasoline was drawn for sale from the storage tanks (Record, p. 24); it was the same gravity when it came out as when it went in (Record, p. 38); the gasoline was bought on the gravity test (Record, pp. 26, 62 and 70); the higher specific gravity costs more than the lower (Record, p. 102); gravity was all the Oil Company kept track of (Record, p. 37); the gasoline was sold under the gravity test and as being State inspected gasoline of a specific gravity (Record, pp. 56, 72 and 73).

As to unblended gasoline, it is without doubt established that the gravity test is a reasonable and proper one. Mr. Walker, an expert sworn on behalf of the Oil Company, testified (Record, p. 55) as follows:

> "Q. Considering the straight-run gasoline alone, would you say that the specific gravity indicated its quality, relatively?
>
> A. To a greater extent than is true taking gasoline generally.
>
> Q. It does to a considerable extent, doesn't it?
>
> A. Yes, to quite an extent.
>
> Q. So much so that gasoline is bought and sold throughout the United States on specific gravity test, isn't that so?
>
> A. We don't buy it that way.
>
> Q. Do you know whether it is bought and sold that way?
>
> A. I know some of it is.
>
> Q. Don't you sell it that way?
>
> A. We sell both ways."

Mr. Abbott, an expert called by the State, gave in part the following evidence. (Record, pp. 108 and 109.)

"Q. Is there any difference in the price of the different specific gravities?

A. Yes, sir.

Q. Does the wholesaler make a difference in the price?

A. Yes, sir.

Q. Do the companies generally make a difference in the price of the different specific gravities in gasoline?

A. You mean the retail?

Q. Yes, at retail.

A. I couldn't state that; they generally take what they call the high test and the low test.

Q. Which is higher in price?

A. The high test, as they call it.

Q. That means specific gravity?

A. Yes, the higher gravity.

Q. The lighter gasoline?

A. Yes.

Q. You may state, in your opinion, whether the specific gravity of the gasoline used commercially in Minnesota indicates its quality or value in the market?

A. It does; it determines the values among the dealers.

Q. Do you know whether or not the specific gravity of gasoline determines its tendency to vaporize into an explosive vapor?

A. It does.

Q. Which is the most liable to vaporize first?

A. The higher specific gravity.

Q. That is, the higher priced, higher gravity, is the most explosive?

A. Yes, sir."

It may be conceded that a distillation test would be most efficient. Such tests, however, must be made by a chemist and each test so made would take from one-half to three-quarters of an hour. (Record, p. 53.) If such tests were adopted, Minnesota would be obliged to have scattered throughout the State an army of chemists.

The gravity test made by use of the so-called "Beaume Scale" can be taken by any person of ordinary intelligence. As to the gravity test, the State contends that it is a reasonable one; not necessarily the best, but one which under conditions known to exist is the most practical and is the most appropriate to the purpose. In State v. Mrozinski, 59 Minn. 465, Justice Mitchell said:

> "The courts will never set up their judgment against that of the legislature, and hold a police law invalid, unless it is clearly so, as having no reasonable tendency to accomplish the desired end."

In Rippe v. Becker, 56 Minn. 100, at page 108, the same Justice states:

> "Where a business is a proper subject of police regulation, doubtless, the legislature may, in the exercise of that power, adopt any measures they see fit, provided only they adopt such as have some relation to, and have some tendency to accomplish, the desired end; and if the measures adopted have such relation or tendency the courts will never assume to determine whether they are wise, or the best that might have been adopted."

In Mo. Pacific Railway Co. v. Omaha, 235 U. S. 121, 127, Mr. Justice Day said:

> "The means to be employed to promote the public safety are primarily in the judgment of the legislative branch of the government, to whose authority such matters are committed, and so long as the means have a substantial relation to the purpose to be accomplished, and there is no arbitrary interference with private rights, the courts cannot interfere with the exercise of the power by enjoining regulations made in the interest of public safety which the legislature has duly enacted. Chicago, Burlington & Quincy Railway v. Drainage Commissioners, supra; McLean v. Arkansas, 211 U. S. 539; Atlantic Coast Line v. Goldsboro, 232 U. S. 548."

C.

THE MINNESOTA STATUTE IS AN INSPECTION LAW AND NOT AN ACT TO RAISE REVENUE.

In the consideration of this branch of the case, it is important to consider not only the history of the legislation, but the operation of the oil inspection laws as to receipts and expenditures.

History of the Legislation.

Minnesota has had oil inspection laws for over forty (40) years. The various acts of the Minnesota legislature relating to such inspection are set forth in full in the Appendix hereto.

Since 1876 the plan of inspection has been substantially the same. Changes have been made relating to the scope of the inspection, the compensation of the inspector and his deputies, their method of payment—either by fees or by salary—and the form of the inspection certificate.

Chapter 90, Laws of 1876.

This was the first oil inspection statute. It provided for a State Oil Inspector and for fees to be collected by him and retained as his compensation. (See Chapter 6, Section 117, G. S. of 1878.) The fees then fixed for such inspection were as follows:

Single Barrel	40 cents.
Not over Five Barrels	30 cents each.
Five to Ten Barrels	25 cents each.
Over Ten Barrels	20 cents each.

Chapter 246, Laws of 1889.

This law put the Oil Inspector on a salary of $2400 and gave the deputy inspectors a certain proportion of the fees earned and collected by them within certain limits. It provided for the inspecting of oil in tank cars, the fees to be based on fifty gallons to the barrel.

Chapter 20, Laws of 1893.

This act made several minor changes in the statute, and gasoline, naphtha and benzine were made subject to inspection. (See Sections 444 to 458, G. S. 1894.)

The fees for inspection were at this time reduced to the following schedule:

Single Barrel	40 cents.
Not over Five Barrels	30 cents each.
Five to Ten Barrels	20 cents each.
Over ten Barrels	15 cents each.

Chapter 65, Laws of 1897.

This law adds penalties for certain violations of the oil inspection statute and makes other minor changes.

Chapter 123, Laws of 1901.

This law went into effect on January 1, 1903. It amended the previous law in several particulars and provided for an illuminating oil inspection fund into which all fees were to be paid. All inspectors and deputies were put on a salary and all fees were to be paid to the State. This was the beginning of the present system of turning the

fees into the State and of paying salaries by the State to the employees and officials of the Oil Inspection Department. The fees were reduced this time to the following schedule:

Single Barrel	40 cents.
Two to Ten Barrels	25 cents each.
Over Ten Barrels	15 cents each.

Chapter 502, Laws of 1909.

This is a continuation of the previous statutes, and provides for additional deputy inspectors at stated salaries for the three large counties. The provisions relating to the inspection and sale of gasoline were made more specific and the penal provisions relating to the sale of adulterated or "under standard" oil and gasoline were made more specific.

The inspectors were relieved of the duty of collecting the inspection fees and that part of the work devolved upon the State Auditor and State Treasurer.

This Chapter went into effect July 2, 1909.

The fees were again reduced, this time to the following schedule:

Single Barrel	40 cents.
Two to Ten Barrels	25 cents each.
Over Ten Barrels	15 cents each.
In Tank Cars	10 cents per bbl.

Chapter 271, Laws of 1915.

This act made a change in the form of the certificate, prohibited the sale of adulterated petroleum products, and again reduced the fees to the following schedule:

Single Barrel	40 cents.
Two to Ten Barrels	25 cents each.
Over Ten Barrels	15 cents each.
In Tank Cars	7 cents per bbl.

Chapter 331, Laws of 1917.

This act again reduced the fees to the following schedule:

Single Barrel	40 cents.
Two to Ten Barrels	25 cents each.
Over Ten Barrels	15 cents each.
In Tank Cars	5 cents per bbl.

The 1915 and the 1917 laws were passed subsequent to the inspection for which this suit was brought to recover fees.

The 1909 law, which constitutes Chapter 20, G. S. 1913, prescribed the fees which are controlling in the present case:

A reading of all of these legislative enactments discloses the fact that all subsequent to 1876 are but amendments and continuations, with some modifications, of the oil inspection system established nearly forty years ago.

The one change which is of any importance in this suit is that made by the Act of 1901, which went into effect January 1, 1903, and which turned over to the State all of the oil inspection fees; and the State in turn paid the salaries and other expenses of the officials and employes in connection with the inspection.

Before that time the Oil Inspection Department was independent of the rest of the State government, and the

Chief Inspector and his deputies and clerks made whatever profit and stood whatever losses there were in connection with the inspection.

On January 1, 1903, the Oil Inspection Department became an integral part of the State government, and the State undertook the financing of that department from the State Treasury. The temporary gains and losses of the inspection were therefore to be absorbed by the State thereafter.

History of the Operation.

The State contends that the operation of this statute should be observed from January 1, 1903, which marks the beginning of the time that the State took the fees into its treasury and paid the inspection officers and employees out of State appropriations.

Receipts.

The State has received as such fees during said years and up to the time that the last of the fees accrued which are involved in this action, the following amounts (Record, p. 153):

Year Ending July 31.	Receipts.
1903	$14,626.10
1904	30,334.05
1905	28,597.35
1906	30,242.70
1907	32,208.05
1908	43,864.15
1909	34,934.40

1910	50,667.67
1911	56,852.84
1912	63,354.35
1913	72,656.38
1914	81,565.90
July 31, 1914, to April 30, 1915	62,689.20

Expenses.

The actual expenses of the State made by the Chief Oil Inspector from the specific appropriation that was by the legislature made available annually for the use of the Oil Inspection Department *alone*, in the conduct of the business of the department for the period covered by the above tabulation as to receipts, were as follows (Record, p. 147):

Year Ending July 31,	Expenses.	Percentage of Receipts used for Department Expenses.
1903	$13,657.37	93%
1904	29,691.59	98%
1905	27,956.90	98%
1906	27,152.42	90%
1907	29,140.35	90%
1908	29,999.08	68%
1909	30,288.05	87%
1910	40,044.24	79%
1911	40,494.08	71%
1912	39,999.76	63%
1913	47,117.62	65%
1914	52,467.56	64%
July 31, 1914, to April 30, 1915	46,863.55	75%

The last column in the above tabulation shows the percentage of the receipts that was used for the expenses of the Oil Department alone.

The expenses, however, cover amounts paid out on account of operating the Minnesota Oil Inspection Department *alone*. This is not a suit by the Chief Oil Inspector and his deputies, but is an action brought by the State.

The pertinent inquiry as to expenses is this: What has been the actual cost *to the State* of making the inspection which has yielded the cash receipts as above tabulated?

The defendant has not proven that the expenses of the so-called Oil Inspection Department alone constitute the entire expenses to the State of inspecting oils and gasoline. This whole expense of the State and not that of any one department must be taken into consideration in addition to the disbursements made directly by the Chief Oil Inspector from his specific annual appropriation. According to the statute, and as shown by the evidence, this State must meet other expenses directly connected with this inspection. Some of them are as follows:

1. Offices for the Oil Inspection Department, including heat, light, elevator and janitor service. The offices are in the State Capitol. (Testimony of A. J. Rush, Record p. 139.)

2. The services of the State Auditor's Department in keeping the accounts, making drafts on those from whom fees are due, attending to the clerical work of the collections, and also attending to the clerical work concerning the disbursements of the entire appropriation of the State Oil Inspection Department, being salaries and other expenses and keeping a permanent record thereof. (Sec. 3631, G. S. 1913, Appendix.)

3. The State Treasurer's Department in making collection of such fees and also in paying the warrants drawn by the State Auditor for said salaries and expenses of the inspection department.

4. Legal counsel furnished by the Attorney General of the State in advising the Chief Oil Inspector and in bringing suit on delinquent and contested claims, and otherwise enforcing payment against those in arrears.

5. The services of the chemist of the State Dairy and Food Department, as provided by statute (Section 3627, G. S. 1913, Appendix) in making chemical analyses.

6. The services of the Public Examiner's Department in checking up the records of the inspection department in conjunction with the other departments of the State as to fees charged, fees collected, expenses incurred and expenses paid. This examination must be made annually (See Sec. 3229, G. S. 1913, Appendix), and must also be made whenever a change is made in the office of Chief Oil Inspector. (See Section 8242, G. S. 1913, Appendix.)

The statute clearly shows the above distribution of labor and consequent expense to the State, and as the defendant has failed to show what this amounts to, it has failed in its proof to the effect that the expenses of the State are grossly or even materially less than the receipts. *They may be more.*

Of course, the State has even more expenses than all of those above mentioned in connection with the enforcement of this oil inspection statute. Among such other expenses might be mentioned those of the courts, of the prosecuting officers and also that of the Legislature and

all of the other State Departments in considering and enacting appropriate legislation. This class of expenses, however, is probably too remote and it is therefore not here pressed for consideration.

Keeping in mind that these expenses are by no means the entire expense to the State, let us compare the proportion of the receipts that has been used by the inspection department with the proportion of receipts that was used by the State in the three cases upon which counsel for the defendant relies here.

This comparison is significant because the test is whether the amount of inspection fees is *disproportionate to the expense of the inspection service.*

In *Foote v. Maryland*, 232 U. S. 494, for the two years that the Oyster Inspection Law had been in force, the result was as follows:

Year.	Receipts.	Expenses.	Percentage of Receipts used for Expenses.
1909	$38,010.00	$14,000.00	35%
1910	43,672.00	14,991.00	34%

In *Bartles Northern Oil Company v. Jackman*, 29 N. Dak. 236, which is the North Dakota oil case, the statute had been in force five and one-half years, with the following result:

Year.	Receipts.	Expenses.	Percentage of Receipts used for Expenses.
1909	$45,603.55	$8,988.75	19%
1910	59,500.94	11,939.70	20%
1911	71,422.20	12,899.75	18%

1912	95,189.82	12,293.69	13%
1913	119,494.97	13,382.79	11%
1914 (first half).	44,549.48	7,412.01	16%

In the Ohio oil case, *Castle v. Mason*, 91 Ohio State 296, it is shown that the inspection law of Ohio, adopted in 1908, had the following result:

Year.	Receipts.	Expenses.	Percentage of Receipts used for Expenses.
1908	$55,815.00	$21,706.00	38%
1909	88,037.00	36,999.00	42%
1910	99,523.00	39,548.00	39%
1911	107,972.00	40,835.00	37%
1912	123,693.00	42,576.00	34%
1913	130,607.00	42,558.00	32%

A comparison of the above percentage indicates at a glance that the authority for holding the Maryland, North Dakota and Ohio inspection laws invalid has no application to the Minnesota statute.

EVERY PRESUMPTION FAVORS THE VALIDITY OF THE LAW.

It is to be presumed that the Legislature intended to keep within the constitutional limits. A law is not to be declared unconstitutional by the courts unless palpably so. Unless a law is unconstitutional beyond a reasonable doubt, it must be sustained. What is a reasonable fee for inspection must depend largely on the sound discretion of the Legislature. Willis v. Standard Oil Co., 50 Minn., 290, 298. In Red "C" Oil Co. v. North Carolina, 222

U. S. 380, an oil inspection case, Mr. Chief Justice White, at pages 392 and 393, said:

> "We cannot lightly attribute improper motives to the law-making power. Florida, Etc. Ry. Co. v. Reynolds, 183 U. S. 471; Ellis v. United States, 206 U. S. 246."
>
> "Prima facie the charge must be deemed to be reasonable. Western Union Telegraph Co. v. New Hope, 187 U. S. 419."

LEGISLATIVE INTENT.

Keeping in mind these presumptions, the next inquiry is as to what was the legislative intent and purpose in enacting the oil inspection statute. Was it enacted in the exercise of a police power of the State and as an inspection measure, or was it enacted as a revenue or tax measure?

The inspection law that was in force in 1891 (Chapter 246, Laws of 1889, and those of which it was amendatory and supplementary) was considered by the Supreme Court in *Willis v. Standard Oil Company*, 50 Minn. 290. This court there disposes of this question in the following language:

> "It is also objected that the act is one levying a tax, and not a police regulation. Of course, under the constitutional provision requiring taxes to be as nearly equal as may be, and to be levied on a cash valuation, the law could not be sustained as a tax law. It can only be upheld as an exercise of the police power of the state; as intended to be just what it purports to be,—an inspection law requiring to be inspected articles which, from their nature and use, may be dangerous to the lives or property of the people of the state. The imposition of fees for inspection, if intended as a mode of raising general revenue for the state, could not be sustained. It could be upheld only as a mode of making the business of dealing in oils pay the expense of its proper police regulation. That the state

may make any business requiring police regulation pay the expense of regulating and controlling it, and that this may be done, by exacting fees, license fees, or inspection fees, from those engaged in the business, no one disputes. On its face, this law is a bona fide police regulation, a proper inspection law, and the fees are in good faith exacted to reimburse the state in the expense of inspection and enforcing observance of the law. Of course, the state, or a municipality may attempt to make the right to exact fees a cover for imposing a tax for general revenue; and, when the court can say that such is the case, the law must stand or fall as a tax law. But a court would not arrive at that conclusion until compelled to do so. Good faith and honesty of purpose on the part of the Legislature must be presumed. The reason urged why this is to be held a tax law is that the fees for inspection in large quantities, such as in railroad tanks, are unreasonable and excessive, and disproportioned to the amount of service required of the inspector. What is a reasonable fee for inspection must depend largely upon the sound discretion of the legislature, having reference to all the circumstances and necessities of the case, and unless it is manifestly unreasonable, in view of the purpose of the law as a police regulation, the court will not adjudge it a tax. City of Mankato v. Fowler, 32 Minn. 364 (20 N. W. Rep. 361); In Re White, 43 Minn. 250 (45 N. W. Rep. 232); City of Duluth v. Krupp, 46 Minn. 435 (49 N. W. Rep. 235)."

The language of the Supreme Court of the United States in *Foote v. Maryland*, 232 U. S. 494, 503, is here pertinent.

"2. Inspection necessarily involves expense and the power to fix the fee, to cover that expense, is left primarily to the legislature which must exercise discretion in determining the amount to be charged, since it is impossible to tell exactly how much will be realized under the future operations of any law. Beside, receipts and disbursements may so vary from time to time that the surplus of one year may be needed to supply the deficiency of another. If, therefore, the fees exceed cost by a sum not unreasonable no ques-

tion can arise as to the validity of the tax so far as the amount of the charge is concerned. And even if it appears that the sum collected is beyond what is needed for inspection expenses, the courts do not interfere, immediately on application, because of the presumption that the Legislature will reduce the fees to a proper sum. Red "C" Oil Co. v. North Carolina, 222 U. S. 380, 393. But when the facts show that what was known to be an unnecessary amount has been levied, or that what has proved to be an unreasonable charge is continued, then, they are obliged to act in the light of those facts and to give effect to the provision of the Constitution prohibiting the collection by a State of more than is necessary for executing its inspection laws. In such inquiry they treat the fees fixed by the Legislature for inspection proper as *prima facie* reasonable and do not enter into any nice calculation as to the difference between cost and collection; nor will they declare the fees to be excessive unless it is made clearly to appear that they are obviously and largely beyond what is needed to pay for the inspection services rendered."

The final conclusion reached in the case of *Foote v. Maryland* is not applicable to the situation in Minnesota for these reasons:

First: The fees collected for inspecting oysters were confessedly on the face of the statute to be used partly for policing the waters of Chesapeake Bay. There is nothing in the Minnesota statute indicating an intent on the part of the Legislature to make the inspecting of oil, revenue-producing, so that a part thereof might be used for any other purpose than defraying the cost of inspection.

Second: Only 34% or 35% of the fees collected in the Maryland case were used for expenses of inspection while in Minnesota about twice that percentage was used for the expenses of the Oil Inspector's Department alone.

which by no means covered the entire expense of the State in its inspection work. While 34% or 35% of the fees collected might be so disproportionate as to compel the courts to hold that the fees charged were unreasonable, it by no means follows that where from 63% to 68% is used for only a part of the expenses of inspection the court could reach the same conclusion. The State is entitled to a reasonable margin between cost of inspection and the resulting receipts before the courts can attribute to the Legislature an intent to make the statute a revenue one. The reasonable excesses of a few prosperous years can be legitimately held to meet possible deficiencies in the future.

In the North Dakota case of Bartles Northern Oil Company v. Jackman, the Attorney General admitted the unconstitutionality of the statute there under consideration, so that whatever was there said by the court on that point was not in response to any issue in the case. Of course, it is apparent that if the using of only 35% of the gross receipts for expenses rendered the statute invalid in the Maryland case, the using of only 11% to 20% thereof, as shown in the North Dakota case, must necessarily condemn the North Dakota statute.

The same can be said of the Ohio case where substantially the same proportion of receipts was used for inspection expenses as in the Maryland case.

The fact that the Legislature from time to time has reduced the inspection fees, as heretofore shown, is a potent argument of the legislative intent not only when the statute was enacted, but its continuing intent thereafter.

The fact that the Legislature of 1915, following the trend of its predecessors, reduced the oil inspection fees 30% is a persuasive argument that it was the legislative

purpose and intent to make and to keep the inspection statute within the police power of the State, and not to make it a tax law.

In arriving at the legislative intent or purpose, the courts have a right to resort to subsequent legislation. In *U. S. v. Freeman*, 3 Howard 556, 564, the court says:

> "If it can be gathered from a subsequent statute in pari materia what meaning the legislature attached to the words of the former statute, they will amount to a legislative declaration of its meaning and will govern the construction of the first statute."

The Supreme Court of Nebraska in *Campbell v. Youngson*, 114 N. W. 415, 418, says:

> "In order to ascertain the proper meaning of a statute, we may refer to later as well as earlier legislation upon the same subject. All existing acts should be considered in considering a given act, and a subsequent statute may often aid in the interpretation of a prior one. 26 Am. & Eng. Ency. (2nd Ed.) 624, and cases cited in note 2."

See also *Indiana Northern Tractor Company v. Ramer* (Ind.), 76 N. E. 808, 810; and *Board of Commissioners v. Branaman*, 169 Ind. 80.

Can this court impute bad faith to the Minnesota legislatures that enacted and subsequently amended the oil inspection statute from time to time where that body has consistently and regularly reduced the inspection fees whenever conditions in their judgment justified it?

Can the courts say that these Legislatures were trying all this time to conceal a revenue measure under the guise of an inspection law?

If it was intended by the Legislature as a revenue tax measure, why should it be regularly *reducing* the fees

when it has been regularly *increasing* the taxes of railroads, express companies, sleeping car companies and freight line companies?

It is obvious that the oil inspection law could not stand as a tax law as was said in *Willis v. Standard Oil Company*, 50 Minn. 250. Neither could it now stand as a tax law under the present constitution, which was amended in 1906.

A classification of the quantities or packages, and the charging of different rates thereon would be so arbitrary as to violate the provision that "taxes shall be uniform upon the same classes of subjects."

A single barrel of oil for which an inspection fee of 40 cents is charged must necessarily belong in the same class for taxation purposes as a barrel of oil in a tank car for which an inspection fee of only 10 cents is charged.

Can the courts then presume that the Legislature would attempt to enact a "tax law" so grossly objectionable to the constitution?

It was said in *State ex rel v. Renswig*, 110 Minn. 475:

> "And to that end it behooves us, as far as we are able, to place such a construction on statutes as will reconcile them to the constitution, and to give them effective operation, under the constitution, according to the intention with which they are passed. It would be palpable violation of judicial duty and propriety to seek in a statute a construction in conflict with the constitution or with the object of its enactment, or to admit such a construction when a statute is fairly susceptible of another in accord with the constitution and the legislative intention."

To hold this law unconstitutional is to charge the legislature with having attempted to deceive the oil dealers

and the public in passing an ostensible inspection law which was alwa[illegible] intended to be a revenue or tax law.

In *New Mexico v. Denver and Rio Grande R. R. Co.*, (203 U. S. 38), Mr. Justice Day flatly says:

> "The law being otherwise valid, the amount of the inspection fee is not a judicial question. It rests with the legislature to fix the amount, and it can only present a valid objection when it is shown that it is so *unreasonable and disproportionate to the services rendered as to attack the good faith of the law.* Foote v. Stanley, 117 Md. 345."

In *Patapsco Guano Co. v. Board of Agriculture* (171 U. S. 345), the court quotes as follows from said Maryland case:

> "It does not appear to us, that evidence tending to show that money collected from this source was applied to other than the purposes for which it was received should be entered into on this inquiry into the validity of this act. If the receipts are found to average largely more than enough to pay the expenses, the presumption would be that the legislature would moderate the charge. But treating the question whether twenty-five cents per ton was shown to be so excessive as to demonstrate a purpose other than that which the law declared, as a judicial question, we are satisfied that comparing the receipts from this charge with the necessary expenses such as cost of analyses, salaries of inspectors, cost of tags, express charges, *miscellaneous expenses of the department in this connection, and so forth*, we cannot conclude that the charge is so seriously in excess of what is necessary for the objects designed to be effected as to *justify the imputation of bad faith* and change the character of the act." Foote v. Stanley, 117 Md. 344."

The Legislature of 1913 was justified in not reducing the fees. The unprecedented increase in the sale of gasoline

in 1912 had made a larger margin of temporary profit (considering only the direct expenses of the Oil Inspection Department), but the result of only one unusual year of a spasmodic demand for a commodity was not of itself sufficient indication of the stability of either the amount of fees or the cost of "field inspection."

CONCLUSION.

I.

"The "original package" test for determining when an article ceases to be the subject of interstate commerce is not applicable to this case.

II.

The oil and gasoline when inspected were not the subject of interstate commerce.

III.

The gravity test, adopted in Minnesota, applied to gasoline is a reasonable inspection law.

IV.

The Minnesota oil inspection law is not an act to raise revenue.

The judgment of the Minnesota Supreme Court should in all things be affirmed.

Respectfully submitted,

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APPENDIX.

CHAPTER 20, G. S. 1913,

Which is Chapter 502, the Laws of 1909.

Inspector of Oils.

3619. *Chief Inspector of Oils—Appointment—Salary—Bond*—The governor by and with the consent of the senate, shall appoint a chief state inspector of oils, whose term of office shall extend until the first Monday of January in the odd-numbered year next after his appointment, and until his successor qualifies; and the governor may supersede said inspector whenever he shall deem it necessary for the public good. He shall receive an annual salary of twenty-four hundred dollars, payable monthly, and shall give bond to the state in the penal sum of five thousand dollars, conditioned for the faithful discharge of his official duties, to be approved by the secretary of state. ('09 c. 502, Sec. 1).

3620. *Deputies*—Such inspector may appoint and at pleasure remove, two deputy inspectors for Hennepin county at a salary of one hundred dollars per month each; two deputy inspectors for Ramsey county at a salary of one hundred dollars per month; one deputy inspector for St. Louis county at a salary of one hundred dollars per month, and one deputy inspector in and for each additional county, who shall assist under his direction in performing the duties imposed by this act. They shall give bond to the state in the sum of two thousand dollars with like conditions as that of the inspector, to be approved

by the judge of the disctrict court of the county in which they severally reside. The deputy inspectors shall receive such compensation, not exceeding one hundred dollars per month, as the state inspector prescribes. Provided, that the pay of any deputy shall not exceed the amount of fees earned by him during the preceding month. ('09, c. 502, Sec. 2).

3621. *Reports and inspection—Improper traffic*—The inspector and his deputies shall cause all the conditions of this act to be observed and enforced, prosecuting all persons offending against the same. The inspector shall keep a record of all inspections made, showing the time and place of each, the number of packages inspected, and the number of gallons contained therein, and the amount of fees therefor; and to that end he shall require monthly reports from his deputies. If any oil has been rejected, such reports shall show the date and place thereof and the quantity rejected, and the names of the dealers in whose hands it is found, and from whom it was received. All such records shall be open to the public. If the inspector or any of his deputies shall traffic, directly or indirectly, in any article of which it is his duty to inspect, he shall be deemed guilty of a gross misdemeanor. ('09 c. 502, Sec. 3).

3622. *Inferior oils—Tests—Certificate*—No person shall sell, or offer for sale or use for illuminating purposes, any coal oil, or product thereof unless the same has been inspected and branded as provided by this act; nor any that will ignite at a temperature below one hundred and twenty degrees Fahrenheit. The instrument to be used in making tests shall be the "Tagliabue Open Cup";

and the gravity of said oils shall be determined by the "Tagliabue Standard Registered Hydrometer Beaume Scale" at a temperature of sixty degrees Fahrenheit, and said gravity shall be stenciled on each barrel or package containing said oil. There shall be printed or stenciled on each tank wagon sale ticket covering delivery of oil the following:

"This is to certify that the oil covered by this sale has a gravity test of ..... and a fire test of not less than 120 degrees and has been inspected and approved by the state oil inspector."

(Name of oil concern to be inserted here.)

Every person or corporation selling or delivering oil in bulk by means of portable tanks, shall, in lieu of the stamp or brand herein provided for, furnish and deliver to the purchaser a certificate as above set forth. ('09 c. 502, Sec. 4.)

3623. *Inspection and branding*—The inspector or one of his deputies, shall test the quality of all illuminating oils made, offered for sale or sold in this state, using for that purpose such instruments as are prescribed in section 4 (3622). If found to answer the requirements of this act, he shall affix to the receptacle containing the same his brand showing the date of his inspection, his name and the words, "approved, gravity test ..... degrees." Otherwise, he shall in like manner brand the same "unsafe for illuminating purposes." He shall give to the person in possession of such oil a certificate of inspection, reciting the package, number of gallons, result of fire test and gravity test and the date of inspection. ('09 c. 502, Sec. 5).

3624. *Branding on request.* Whenever requested so to do by the owners, the inspector or his deputy shall brand any receptacle of oil containing forty gallons or more as "unsafe for illuminating purposes" without inspecting the same and without fee. And as soon as practicable after request and tender of the fees, he shall test and brand any quantity of oil to which such request related. Provided, that if such inspection be desired at a place other than at the railroad station or dock when the same was delivered to the person making the request, the inspector in addition to his legal fees shall receive ten cents for each mile necessarily traveled in going to and returning from the place of inspection; but no mileage shall be required for travel outside of the county in which the inspection is made. (09 c. 502, Sec. 6).

3625. *Gasoline—Tests—Certificate*—For the purposes of this act, gasoline shall be deemed to be subject to the same inspection and control as provided for in this act for illuminating oils, except that the inspectors are not required to test it other than to ascertain its gravity; and it shall be unlawful for any person, dealer or vendor to sell or offer for sale, any petroleum products known as gasoline that has not been so inspected and approved. All gasoline shall be tested as to gravity in the same manner as oil and shall be branded "Unsafe for illuminating purposes," and every barrel, cask or package which contains gasoline shall be labeled or branded with the word "Gasoline" in large red letters at least two inches in size, and the gravity thereof shall be stenciled on each barrel or package. Provided, however, that any person or corporation selling or delivering gasoline in bulk by tanks shall, in lieu of the stamp or brand herein provided for, print

or stencil on each tank wagon sale ticket covering deliveries of gasoline the following:

"This is to certify that the gasoline covered by this sale has a gravity test of ..... and has been inspected and approved by the state oil inspector."

(Name of oil concern inserted here.)

('09 c. 502, Sec. 7).

3626. *Gasoline receptacles — Inspection* — The inspector and his deputies are empowered, and it is hereby made their duty, to enter upon the premises of all wholesale and retail dealers in gasoline and to inspect the receptacles in which said gasoline is stored; and it is made the duty of all dealers in gasoline to keep such receptacles free from water and all other foreign substances. ('09 c. 502, Sec. 8).

3627. *Sale of adulterated oils or gasoline — Analysis* — The sale of any adulterated illuminating oils or gasoline is hereby forbidden and prohibited and any oils that present a yellowish or dark color or dirty appearance to the eye, may be rejected and disapproved for illuminating purposes by the said chief inspector of oils or his deputies without further test. And such discoloration shall be prima facie evidence that such oils are not such a product as is properly subject to sale for illuminating purposes within this state. The chief inspector of oils and his deputies are not required in every case to make a complete analysis of the oils inspected to ascertain every form of impurities such as sulphur, tar-like matter, but whenever in the opinion of the chief inspector of oils or his deputies it is necessary that any of the oils provided for in this section shall be more thoroughly analyzed it shall be their duty to

procure a sample of such oil and forward same to the chemists of the state dairy and food department for the purpose of a more detailed analysis to determine in what particular the impurities or imperfections exist. And if upon such analysis it is demonstrated that some other impurities or imperfections exist in said oil, not in this act specified, which would render such oil in any way unfit for illuminating purposes, it shall be his duty [to] reject such oil for such purposes. It shall be the duty of such chemist to make such analysis without delay and return such sample of oil at the earliest practicable moment to the chief inspector from whom it was received, together with his official analysis of the same. ('09 c. 502, Sec. 9.)

3628. *Oil or gasoline in tanks—Inspection before unloading*—Oil or gasoline shipped in tanks or tank cars shall not be unloaded until it is duly inspected, providing such inspection is made within twenty-four hours, after the arrival and notice setting forth the number of the car and date of its arrival has been given the inspector. Each fifty-five gallons or major fraction thereof shall be considered a barrel in computing the inspection fees. No further inspection shall be necessary, and, if such oil be afterwards placed in barrels, the inspectors shall brand without extra charge one such barrel for each fifty-five gallons thereof. ('09 c. 502, Sec. 10).

3629. *Uncanceled or false brands—Color of barrels.*—No person shall use as a receptacle for illuminating oils any barrel, tank or other vessel previously used for that purpose and having said inspector's brand thereon, without first cancelling such previous brand; nor shall any person falsely brand, mark or otherwise represent any

such vessel as containing oil that has been inspected. Every violation of this section shall be deemed a misdemeanor. All barrels shall be painted blue, yellow or green; gasoline barrels red. ('09 c. 502, Sec. 11.)

3630. *Fees*—The fees for inspecting and branding shall be as follows:

1. For a single barrel or other receptacle containing not more than fifty-five gallons, forty cents.

2. If more than one and not more than ten such receptacles be inspected at one time and place, twenty-five cents for each.

3. If more than ten, fifteen cents for each additional barrel or receptacle, except as hereinafter provided.

4. Oil or gasoline in tanks or tank cars, containing more than fifty barrels, ten cents per barrel.

If the quantity in any one receptacle exceeds one barrel, excepting where the same is in tanks or tank cars containing fifty barrels or more, ten cents shall be charged for each fifty-five gallons thereof. Such fees shall be payable at the time of the inspection: Provided, that when oil is shipped outside of the state after inspection fees have been paid, the firm shipping same shall be given credit by the inspector for such fees. And provided, further, that all kerosene oil and gasoline inspected in other states, where the inspection requirements are as high as those required herein may be admitted without additional inspection on payment of the fees required by this act. ('09 c. 502, Sec. 12).

3631. *Fees, how collected—Report—Annual appropriation—Expenses.* It shall be the duty of the inspector

on or before the tenth day of each month to certify to the state auditor the money due from any corporation, firm or individual as inspection fees, and it is hereby made the duty of the state auditor to collect such fees and pay them into the state treasury. At the end of each fiscal year the inspector shall make an annual report to the governor. All moneys collected hereunder shall be credited to the "Oil Inspection Fund." For the payment of salaries of the state inspector, his deputies and office force, and the expense provided for in this chapter, the sum of forty thousand dollars, or so much thereof as may be necessary, is hereby annually appropriated out of the oil inspection fund, herein provided for. On or before the fifteenth day of each month the inspector shall certify to the state auditor the amount due to each of his deputies as compensation and mileage for the preceding month, also the items and amounts of all expenses necessarily incurred by him in the performance of his duties, including the cost of blanks, stationery, postage, travel and instruments furnished for testing and branding oils, and such salaries, mileage and expenses being duly audited shall be paid by the state. ('99 c. 502, Sec. 13).

3632. *Violation a misdemeanor.* Any person, firm, or corporation wilfully violating any of the terms of this act is hereby declared guilty of a misdemeanor. ('09 c. 502, Section 14).

CHAPTER XC, LAWS 1876.

AN ACT TO PROVIDE FOR THE INSPECTION OF ILLUMINATING OILS MANUFACTURED FROM PETROLEUM OR COAL OILS.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. That there shall be appointed by the governor, by and with the advice and consent of the senate, a suitable person, resident of the state, who is not interested in manufacturing, dealing or vending any illuminating oils manufactured from petroleum, as state inspector of oils, whose term of office shall be two years from the date of his appointment, or until his successor shall be appointed and qualified. The governor shall have power to remove such person from office whenever it shall appear to him from good and sufficient evidence that such officer is guilty of malfeasance or non-feasance in performance of his duty, and may fill any vacancy arising from such removal from resignation, death or removal from the state, by a new appointment.

Section 2. It shall be the duty of said state inspector of oils to examine and test the quality of all such oils offered for sale by any manufacturer, vendor, dealer; and if, on testing or examination, the oils [shall] meet with the requirements hereinafter specified, he shall affix his brand or device, and the date of the inspection, with the word "approved" upon the barrel, cask or other package containing the same, and it shall be lawful for any manufacturer, vendor or dealer to sell, the same as an illuminator; but if the oil so tested shall not meet the said requirements he shall mark in plain letters on said barrel, cask or package with device and date as aforesaid, the words "un-

safe for illuminating purposes"; and it shall be unlawful for the owner thereof to sell such oil for illuminating; and if any person shall sell or offer for sale such rejected oil, he shall be deemed guilty of a misdemeanor, and shall be punished as provided in Section four of this Act. *Provided, however*, that all oils inspected under this Act shall be inspected within the state of Minnesota. The state inspector provided for in this Act is hereby empowered to appoint a suitable number of deputies; and he shall appoint one such deputy for each and every county, on application to him to that end, which said deputies are hereby empowered to perform the duties of state inspector, and shall be liable to the same penalties as the state inspector. *Provided*, that the state inspector may remove any of said deputies from office at any time, for reasonable cause. It shall be the duty of the inspector and his deputies to provide themselves, at their own proper expense, with the necessary instruments and apparatus for testing the quality of said illuminating oils, and for marking the packages in which the same may be contained; and when called upon for that purpose to promptly inspect all oils herein mentioned, and to report as dangerous or inferior all oils which, by reason of being adulterated, or for any other reason, will, at the temperature of one hundred and thirty degrees of Fahrenheit's thermometer, emit an explosive gas or vapor, or [is] inferior in quality for illuminating purposes. *Provided*, that the quantity of oil used in this test shall not be less than half a pint. The oil tester and mode of testing adopted, recommended by the state board of health, shall be used and followed by the state inspector and his deputies. Said inspector and his deputies are hereby empowered, and shall, upon appli-

cation and the tender of fees herein provided, enter during business hours into any store, shop or warehouse in which such illuminating oils are kept for sale, and inspect and test such oils, marking the packages in which the same are contained, as hereinbefore provided. The decision of any deputy inspector on any package of oil shall be subject to appeal to the state inspector, whose decision shall be final.

Sec. 3. The person appointed state inspector shall, before he enters upon the duties of his office, take an oath or affirmation prescribed by the laws of this state, and shall execute bond to the state of Minnesota, in the sum of five thousand dollars, with such sureties as shall be approved by the secretary of state, conditioned for the faithful performance of his duties under this act, which bond so approved shall be filed with the secretary of state. Each deputy inspector appointed shall, before entering upon the duties of his office, take a like oath or affirmation, and execute a bond as aforesaid, of not less than one thousand nor more than five thousand dollars, as may be directed by the state inspector, which bond, with said sureties as shall be approved by the judge of probate, be, with his approval thereon, filed in the office of the clerk of the district court for the county to which such deputy is appointed. Such inspector or deputy shall be entitled to demand or receive from the owner or party calling upon him, or for whom he shall inspect, the sum of forty cents for testing and marking a single barrel, cask or package; thirty cents each when not exceeding five in number; twenty-five cents each when not exceeding ten in number, and twenty cents each when in number or pack-

ages greater than ten, submitted at one time for inspection. And it shall be the duty of every deputy inspector to keep a true and accurate record of all oils inspected by him, which record shall state the date of inspection, the number of packages, the number of gallons therein, so near as they can be ascertained, and the name of the person for whom inspected, and shall make to the state inspector, at the end of each month, a report containing a true transcript of such record. And it shall be the duty of the state inspector to keep a like record of all oils inspected by him, and at the end of each year to make a report to the secretary of state of the number of packages and gallons so inspect[ed] therein; also amount of inferior or unsafe oil for illuminating purposes, with the name of dealer in whose hands found, and from whom received by said dealer. Such records shall be open to inspection of any and all persons interested.

Sec. 4. All illuminating oil manufactured, refined or compounded within this state of *petroleum, coal oil, or their products* in part or in whole, shall be inspected before being removed from the manufactory or refinery. And if any person or persons, whether manufacturer, vendor or dealer, shall sell to any person within this state any such illuminating oils, whether manufactured in this state or not, before having the same inspected as provided in this act, he shall be deemed guilty of a misdemeanor, and he shall be subject to a penalty in any sum not exceeding five hundred (500) dollars. And if any manufacturer, vendor or dealer of such oils shall falsely brand the package, cask or barrel containing the same, as provided in sections one (1) and two (2) of this act, or shall use barrels, casks or packages having the inspector's brand there-

on, without having the oil inspected, he shall be deemed guilty of a misdemeanor, and he shall be subject to a penalty in any sum not exceeding five hundred dollars, nor less than one hundred dollars, or be imprisoned in the county jail for a term not exceeding six months, or both, at the discretion of the court.

Section 5. It shall be the duty of the state inspector, or of any deputy inspector, who shall know of the violation of any of the provisions of this act, to enter complaint before any court of competent jurisdiction against any person so offending.

Section 6. No inspector or deputy inspector shall while in office, traffic directly or indirectly in any article which he is appointed to inspect. For the violation of this section he shall be liable to a penalty not exceeding one thousand dollars.

Section 7. No person shall fraudulently adulterate for the purpose of sale or use, any kerosene or coal oils to be used for illuminating purposes; nor shall any person knowingly sell or offer for sale, or knowingly use any kerosene or coal oils, or any of the products thereof, which by reason of being adulterated, or for any other reason, will, at the temperature of one hundred and thirty (130) degrees of Fahrenheit's thermometer, emit an explosive vapor or gas, or be deficient in quality for illuminating purposes. *Provided*, that the quantity used for tests shall not be less than one-half pint; *And provided further*, that the gas or vapor from said oils may be used for illuminating purposes, when the oils from which said gas or vapor is generated are contained in reservoirs outside the building illuminated by such gas. Any person violating the

provisions of this act shall be deemed guilty of a misdemeanor, and shall upon conviction thereof be punished by imprisonment in the county jail not more than one year, or by a fine not exceeding five hundred dollars, or by both fine and imprisonment, in the discretion of the court.

Section 8. Chapter 86, of the general laws of 1875, entitled, "An act to provide for the inspection of mineral oils for illuminating purposes," and all acts or parts of acts inconsistent with the provisions of this act, are hereby repealed.

Section 9. This act shall take effect and be in force from and after the first day of April, 1876.

Approved March 2, 1876.

CHAPTER 72, LAWS OF 1877.

AN ACT TO AMEND CHAPTER NINETY (90) OF THE GENERAL LAWS OF ONE THOUSAND EIGHT HUNDRED AND SEVENTY-SIX (1876), ENTITLED "AN ACT TO PROVIDE FOR THE INSPECTION OF ILLUMINATING OILS MANUFACTURED FROM PETROLEUM OR COAL OILS."

Be it enacted by the Legislature of the State of Minnesota:

Section 1. That section eight (8) of chapter ninety (90) of the General Laws of one thousand eight hundred and seventy-six (1876), be amended so as to read as follows:

Sec. 8. All oils in quantities less than ten (10) barrels, shall be inspected at a railroad or river station, unless the party requesting such inspection shall pay the inspector in advance, ten (10) cents per mile for each mile necessarily traveled in making such inspection, to be com-

puted from the place of residence of said inspector, in addition to the compensation heretofore provided by law. Said inspector, and each of his deputies, is also authorized and empowered to enter, during business hours, into any store, shop, yard, or warehouse, in which he believes such oils, uninspected or unsafe for illuminating purposes are found, and inspect and test such oils, marking the package inspected as hereinbefore provided. Any person or persons who shall sell or refill an empty cask or barrel having the inspector's brand, "Approved", thereon, without first erasing the brand, shall be guilty of a misdemeanor, and shall be subject to the penalty provided in the last part of section four (4) of this act.

Section 2. This act shall take effect and be in force from and after its passage.

Approved February 24, 1877.

CHAPTER 37, LAWS 1878.

AN ACT TO AMEND CHAPTER NINETY (90) OF THE GENERAL LAWS OF ONE THOUSAND EIGHT HUNDRED AND SEVENTY-SIX (1876), ENTITLED "AN ACT TO PROVIDE FOR THE INSPECTION OF ILLUMINATING OILS MANUFACTURED FROM PETROLEUM OR COAL OILS."

Be it enacted by the Legislature of the State of Minnesota:

Sec. 1. That section five (5), and section eight (8), of the General Laws of one thousand eight hundred and seventy-six (1876), be amended so as to read as follows: Section five (5). It shall be the duty of the State inspectro and of every deputy inspector, who shall know of the violation of any of the provisions of this act, to enter

complaint before any court of competent jurisdiction against any person so offending; and all justices of the peace within their respective counties shall have power to order any person violating any of the provisions of this act to enter into a recognizance, and with sufficient sureties in such sum as to them may seem proper for his appearance at the next term of the district court, to answer to such complaint or charges as may be made against him. Section eight (8). All oils in quantities less than fifty barrels shall be inspected at a railroad or river station, unless the party requesting such inspection, shall pay the inspector in advance in addition to the compensation heretofore provided by law, ten cents per mile for each mile,necessarily traveled in going [to] and returning from the place where such inspection is to be made; the distance to be computed from the place of residence of such inspector. Said inspector and each of his deputies is also authorized and empowered to enter during business hours without being requested so to do into any store, shop, yard or warehouse, or other place in which he believes oils uninspected and or unsafe for illuminating purposes are found, and inspect and test such oils and to mark in the manner hereinbefore provided the packages or barrels inspected, and in such cases the inspector shall be entitled to demand and receive from the owner or claimant of the oil inspected, the same fees and mileage as in other cases herein prescribed. Any person or persons who shall sell or refill an empty cask or barrel having the inspector's brand "approved" thereon without first erasing the brand, shall be guilty of a misdemeanor and shall be subject to the penalty provided in the last part of section four (4), of this act.

Sec. 2. This act shall take effect and be in force from and after its pasage.

Approved March 11, 1878.

CHAPTER 246, LAWS 1889.

AN ACT TO FIX THE SALARY OF THE INSPECTOR OF ILLUMINATING OILS AND THE COMPENSATION OF THE DEPUTY INSPECTORS, AND TO PROVIDE FOR THE DISPOSITION OF THE FEES RECEIVED FOR INSPECTIONS, AND TO PROVIDE FOR THE INSPECTION OF ILLUMINATING OILS IN TANK CARS.

Be it enacted by the Legislature of the State of Minnesota:

Sec. 1. The inspector of illuminating oils shall receive an annual salary of two thousand four hundred (2,400) dollars per annum, payable monthly, as provided for in the cases of other state officers, which salary shall be in full compensation for all services and expenses for the performance of duties now or hereafter required by law.

Sec. 2. The said inspector shall collect the fees now or hereafter provided by law, for inspecting oils. He shall make monthly statements, in detail under oath to the state auditor, of all fees collected by himself, or received from his deputies under the provisions of this act, and pay the amount so shown to be collected or received to the state trasurer, monthly, on or before the tenth (10) day of each and every month.

Sec. 3. Not more than one deputy inspector of illuminating oils shall be appointed in any county. Such deputies shall collect all fees now or hereafter provided by law for inspecting oils, earned by them, and pay over the same with a monthly report under oath, to the inspector of illu-

minating oils, retaining for their services fifty per centum of the same, until the commission shall amount to fifty (50) dollars per month, and twenty-five (25) per cent. thereafter; *Provided* that no deputy shall retain more than the percentages herein provided, and until the commission shall amount to one hundred (100) dollars per month, and ten (10) per cent. thereafter. *Provided*, that no deputy shall receive as compensation for his services a sum to exceed the sum of two thousand (2,000) dollars per annum, and that all fees collected in excess of two thousand (2,000) dollars be paid into the state treasury; *Provided, however*, that when the fees so collected amount to less than thirty (30) dollars per month in any county, the deputy inspector may retain the entire amount thereof, on making report of the same.

Sec. 4. The inspector of illuminating oils and his deputies may inspect and test illuminating oils, in a tank railroad car, so-called, standing on a railroad track, and such oil shall not be transferred into warehouse or storage tanks or unloaded until so inspected; when such oil has been so tested and inspected no other inspection shall be necessary, but the inspector or deputy shall, when such oil is put into barrels, brand the said barrels without charge; when the amount contained in any such tank shall exceed fifty (50) gallons, each fifty (50) gallons shall constitute a barrel within the meaning of the law, and the fees for inspecting the same, and for branding the barrel shall, for each fifty (50) gallons, be the same as prescribed for each barrel or package, by law.

Sec. 5. All acts or parts of acts, inconsistent with or conflicting with the provisions of this act are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its passage.

Approved March 22, 1889.

CHAPTER 20, LAWS 1893.

AN ACT TO GOVERN THE INSPECTION AND USE AND SALE OF ILLUMINATING OILS, OR PETROLEUM AND PETROLEUM PRODUCTS, FOR USE IN THE STATE OF MINNESOTA, AND DEFINING THE DUTIES OF INSPECTORS AND PRESCRIBING PENALTIES AND INSPECTION FEES AND THE MANNER OF APPOINTMENT OF INSPECTORS.

Be it enacted by the Legislature of the State of Minnesota:

Sec. 1. There shall be appointed by the governor, by and with the consent of the senate, a suitable person, resident of the state, who is not interested in manufacturing, dealing or vending any illuminating oils manufactured from petroleum, as state inspector of illuminating oils, whose term of office shall be for the term of two years, or until his successor is appointed and qualified. The governor shall have the power to remove such person from office whenever it shall appear to him from good and sufficient evidence that such officer is guilty of malfeasance or non-feasance in the performance of his duty, and may fill any vacancy arising from such removal, or from resignation, death or removal from the state, by a new appointment; provided, however, that nothing in this act shall in any way affect the term of office or powers of the present state inspector of illuminating oils.

Sec. 2. The person appointed as state inspector of illuminating oils shall, before he enters upon the duties of

his office, take the oath or affirmation prescribed by the laws of this state, and shall execute a bond to the state of Minnesota in the sum of five thousand dollars, with such sureties as shall be approved by the secretary of state, conditioned for the faithful performance of his duties under this act, which bond, so approved, shall be filed with the secretary of state.

Sec. 3. The state inspector of illuminating oils shall and is hereby empowered to appoint such deputy inspectors in the different counties of the state as shall be necessary for the prompt and faithful performance of the duties required under this act, and such deputies are hereby empowered to perform the duties of the state inspector of illuminating oils, and shall be liable to the same penalties as the state inspector; provided, that the state inspector may, at any time, remove any of the deputies for reasonable cause and appoint others in their place. Such deputy inspector shall, when so appointed, before he enters upon the duties of his office, take a like oath or affirmation and execute a bond as aforesaid, in a sum not less than one thousand dollars nor more than five thousand dollars, with good and sufficient sureties, which bond, with such sureties as shall be approved by the judge of the district court, shall be filed with his approval in the office of the clerk of the district court for the county to which said deputy is appointed.

Sec. 4. No inspector or deputy inspector shall, while in office, traffic, either directly or indirectly, in any article which he is appointed to inspect. For violation of this section he shall be liable to a penalty not exceeding one thousand dollars.

Sec. 5. It shall be the duty of the deputy inspector to keep a true and correct record of all oils inspected by him, which record shall state the date and place of inspection, the number of packages inspected, and the number of gallons therein contained so near as can be ascertained, and at the end of each month make a true transcript of such record and forward it to the state inspector. It shall be the duty of the state inspector of illuminating oils to keep a true and correct record of all oils inspected by himself or deputies in the same manner prescribed for deputy inspectors, and at the end of each year he shall make a detailed report to the secretary of state of the number of packages and number of gallons inspected, date of inspection by months, the number of packages and gallons approved and the number rejected, the date and place of rejection if rejected, the name of the dealer in whose hands found and from whom the dealer received the same, and these records shall be open at all times and to all persons.

Sec. 6. No person, firm or corporation shall knowingly sell or offer for sale, or knowingly use in this state any kerosene or coal oils or any product thereof which by reason of adulteration or for any other reason will at a temperature of one hundred and twenty degrees Fahrenheit ignite and burn. Provided, that the quantity used for tests shall not be less than one-half pint. And provided further, that the gas or vapor from said oils may be used for illuminating purposes when the oils from which said gas or vapor is generated are contained in reservoirs outside of the building illuminated by such gas, and that an oil which will ignite and burn at a lower temperature than one hundred and twenty degrees Fahrenheit may be sold

and used for fuel purposes. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be punished by imprisonment in the county jail not more than one year, or by a fine not exceeding five hundred dollars, or both fine and imprisonment in the discretion of the court.

Sec. 7. All illuminating oils manufactured, refined or compounded within this state from petroleum or coal oil or their products shall be inspected before being removed from the refinery or manufactory; and if any person or persons, whether manufacturer, vendor or dealer, shall sell to any person for use or sale within this state any such illuminating oils, whether manufactured within this state or not, before having the same inspected, as provided for in this act, or shall sell or offer for sale or represent for the purpose of sale any such illuminating oil as having a higher flash or fire test than that which such oil shall have been found to have stood when inspected by any of the inspectors provided for in this act, he or they shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be subject to a fine not exceeding five hundred dollars nor less than one hundred dollars. Any manufacturer, vendor or dealer who shall sell or cause to be sold any package containing gasoline, naphtha or benzine, or fill for the purpose of sale or use any package with gasoline, naphtha or benzine marked or branded as kerosene or any other illuminating oil or fluid without first erasing such brand or mark, or shall sell or cause to be sold any package containing gasoline, naphtha or benzine without such package being plainly tagged, labeled or branded with the name of its contents, or if any manufacturer, vendor or dealer shall sell to any person or persons

any naphtha, benzine or gasoline for use within this state in barrels, casks or packages containing forty or more gallons without first having branded as directed by the state inspector of illuminating oils the words "unsafe for illuminating purposes," shall be deemed guilty of a misdemeanor, and, upon conviction shall be subject to a penalty not exceeding five hundred dollars nor less than one hundred dollars.

If any manufacturer, vendor or dealer of such oils shall falsely brand or cause to be branded any package, cask or barrel, or shall use or cause to be used any barrel, cask or package having the inspector's brand thereon without first having the oil therein inspected as required in this act, he shall be deemed guilty of a misdemeanor and, upon conviction, shall be subject to a penalty not exceeding five hundred dollars nor less than one hundred dollars or be imprisoned in the county jail for a term not exceeding six months, or both, in the discretion of the court.

Sec. 8. It shall be the duty of said state inspector of illuminating oils, or one of his deputies, to examine and test the quality of all such oils offered for sale by any manufacturer, vendor or dealer, and if on testing or examining the oils shall meet the requirements hereinafter specified, he shall affix his brand or device showing the date of inspection and the legal test of said oil, with the word "Approved" and the name of the inspector upon the barrel, cask or package containing the same, and shall issue to the person for whom inspected a certificate of inspection and approval relating the package, number of gallons, test and date inspected, whereupon it shall be lawful for any manufacturer, vendor or dealer to sell the

same as an illuminating oil or for heating purposes; but if the oil so tested shall not meet the said requirements, then he shall mark in plain letters upon said barrel, cask or package the words "Unsafe for illuminating purposes," and shall issue a certificate of inspection and rejection, relating the package, number of gallons, test and date rejected; and if any person shall sell or offer for sale any such rejected oil he shall be deemed guilty of a misdemeanor and shall, upon conviction, be punished as provided for in section six of this act; provided, however, that all aforesaid oils sold for use within this state of Minnesota must be inspected and all packages branded by the state inspector of illuminating oils, or his regularly appointed deputies. It shall also be the duty of the state inspector of illuminating oils or one of his deputies, when called upon, to brand all barrels, casks or packages containing forty or more gallons of benzine, naphtha or gasoline with the words "Unsafe for illuminating purposes," together with the name of the inspector; provided, however, that he shall not be entitled to demand or receive any fee or other compensation for such work. It shall be necessary for the state inspector of illuminating oils and his deputies to provide themselves, at their own proper expense, with the necessary instruments and apparatus for testing the aforesaid illuminating oils and marking the packages in which the same are contained; and, when called upon, to promptly inspect all oils herein mentioned and to reject as dangerous or unsafe for illuminating purposes all oils which by reason of adulteration or for any other reason will, at a temperature of one hundred and twenty degrees Fahrenheit, ignite or burn; provided, the quantity of oil in such test shall not be less than one-half pint. The

oil tester and mode of test shall be that recommended by the state board of health, and shall be used and followed by the state inspector of illuminating oils and his deputies. Said inspector and his deputies are hereby empowered and shall upon application and tender of the fees herein provided, enter, during business hours, into any store, shop, manufactory or warehouse in which said illuminating oils are kept for sale, and inspect and test such oils, marking the packages in which the same are contained as provided in this act. The decision of any deputy inspector on any package of oil shall be subject to an appeal to the state inspector of illuminating oils, whose decision shall be final.

Sec. 9. All oils in quantities of less than fifty barrels shall be inspected at a railroad or river station unless the party requesting shall pay the inspector in advance and in addition to the fees provided for in this act, ten cents per mile for each mile necessarily traveled in going to and returning from the place where such inspection is made, the distance to be computed from the place of residence of such inspector. Provided no mileage shall be required for any distance traveled outside of the county where such oil is inspected.

Said inspector and his deputies are hereby authorized and empowered to enter, during business hours, without being requested so to do, any store, shop, warehouse or yard or other place in which he believes oil uninspected or unsafe for illuminating purposes for sale or use within this state, may be found, and inspect and test such oils and to brand any barrel, cask or package in which said oil may be contained as provided for in this act; and in

such cases the inspector shall be entitled to receive and demand from the owner of such oil inspected the same fees and mileage as provided for in this act. Provided, that nothing herein contained shall authorize the state inspector of illuminating oil or his deputies to demand fees for the inspection of oils which have once before been inspected by himself or deputies, or upon oils in transit for use in other states, or sold for delivery to other states.

Any person or persons who shall refill or sell any empty barrel, cask or package having the inspector's brand "Approved" thereon without first erasing the brand, shall be deemed guilty of a misdemeanor and shall be subject to a penalty of a fine not exceeding five hundred dollars.,

Sec. 10. The state inspector of illuminating oils or his deputies may inspect and test illuminating oils in a tank, or railroad tank-car, so-called, standing upon a railroad track, and such oil shall not be transferred into warehouse or storage tanks or otherwise unloaded until so inspected. Provided, however, if any such oils are not inspected within twenty-four hours after arriving at their destination it may be unloaded and the inspector shall make his inspection after it is so unloaded, and when such oil has been so inspected no other inspection shall be necessary, but the inspector or his deputy shall, when such oil is put into barrels, brand the said barrels without charge. When the amount contained in any such tank shall exceed fifty-five gallons, each fifty-five gallons shall constitute a barrel within the meaning of the law, and the fees for inspecting the same and for branding the barrels shall for each fifty-five gallons be the same as prescribed for in this act for each barrel, cask or package.

Sec. 11. The state inspector of illuminating oils or his deputies shall be entitled to demand and receive from the owner or party calling upon him or for whom he shall inspect any such oils, the sum of forty cents for testing and marking a single barrel, cask or package not containing more than fifty-five gallons; thirty cents each when not exceeding five in number of above capacity each, twenty cents when not exceeding ten in number of above capacity each, submitted at one time for inspection; fifteen cents each where the number of packages exceed ten in number of a capacity not in excess of fifty-five gallons each, and fifteen cents for each fifty-five gallons when contained in barrels, casks, packages, tank-cars, storage-tanks or otherwise with a capacity in excess of fifty-five gallons each.

Sec. 12. It shall be the duty of the state inspector of illuminating oils and of every deputy inspector who shall know of the violation of any of the provisions of this act to enter complaint before any court of competent jurisdiction against any person so offending, and all justices of the peace within their respective counties shall have power to order any person violating any of the provisions of this act to enter into a recognizance, and with sufficient sureties, in such sum as to them may seem proper, for his appearance at the next term of the district court, to answer to such complaint or charges as may be made against him.

Sec. 13. All acts or parts of acts inconsistent with this act are hereby repealed.

Sec. 14. This act shall take effect and be in force from and after its pasage.

Approved April 14, 1893.

CHAPTER 65, LAWS 1897.

AN ACT TO AMEND SECTION FOUR HUNDRED AND FIFTY-TWO (452), CHAPTER SIX (6), STATUTES OF ONE THOUSAND EIGHT HUNDRED AND NINETY-FOUR (1894), RELATING TO ILLUMINATING OILS.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Amend section four hundred and fifty-two (452) of chapter six (6), statutes of one thousand eight hundred and ninety-four (1894), by striking out the following words: "When the oil (s) from which said gas or vapor is generated are contained in reservoirs outside of the building illuminated by such gas;" and by adding the following words, "and from what is commonly known as gasoline," making said section to read as follows:

Section 452. No person, firm or corporation shall knowingly sell or offer for sale or knowingly use in this state any kerosene or coal oil, or any product thereof, which by reason of adulteration or for any other reason will at a temperature of one hundred and twenty degrees, Fahrenheit, ignite and burn. *Provided*, that the quantity used for tests shall not be less than one-half pint. And *provided further*, that the gas or vapor from said oils and what is commonly known as gasoline may be used for illuminating purposes, and that an oil which will ignite and burn at a lower temperature than one hundred and twenty degrees, Fahrenheit, may be sold and used for fuel purposes. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and shall upon conviction thereof be punished by imprisonment in the county jail not more than one year or by a fine of not

exceeding five hundred dollars ($500), or both fine and imprisonment, in the discretion of the court.

Section 2. None of the provisions of this act shall apply to cities of more than fifty thousand inhabitants.

Section 3. This act shall take effect and be in force from and after its passage.

Approved March 22, 1897.

CHAPTER 123, LAWS OF 1901.

AN ACT TO AMEND SECTIONS ONE (1), THREE (3), AND ELEVEN (11) OF CHAPTER TWENTY (20) OF THE GENERAL LAWS OF THIS STATE FOR THE YEAR 1893, RELATING TO THE INSPECTION AND USE AND SALE OF ILLUMINATING OILS, AND DEFINING THE DUTIES OF INSPECTORS AND PRESCRIBING PENALTIES AND INSPECTION FEES, AND THE MANNER OF APPOINTMENT OF INSPECTORS FIXING SALARIES AND MAKING AN APPROPRIATION.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. That section one (1) of chapter twenty (20) of the General Laws of this state for the year 1893 be, and the same is hereby amended so as to read as follows:

Section 1. There shall be appointed by the Governor by and with the consent of the senate, a suitable person, resident of this state, who is not interested in the manufacturing, dealing or vending illuminating oils manufactured from petroleum, state inspector of illuminating oils, whose term of office shall be two years, or until his successor shall have been appointed and shall have qualified.

Said inspector shall receive an annual salary of two

thousand four hundred dollars per annum, payable monthly, in manner as now provided by law in respect to other salaried state officers, which salary shall be in full for his services. He shall make and file with the state auditor monthly statements, verified under oath, of all fees collected by himself or deputies under the provision of this act, and pay the amount so collected to the state treasurer on or before the tenth day of each month, taking the state treasurer's receipt therefor, and filing the same with the state auditor on the day of its receipt ,the moneys so received shall be kept as a separate fund to be known and designated as the "illuminating oil inspection fund."

The governor shall have the power to remove such appointee from office whenever it shall satisfactorily appear to him that said appointee has been guilty of malfeasance or non-feasance in the performance of his duties, or is inefficient, or incompetent, and may fill the vacancy arising by such removal or by death, or otherwise, by a new appointment.

Section 2. That section three (3) of chapter twenty (20) be, and the same is hereby amended so as to read as follows:

Section 3. The state inspector of illuminating oils may and he is hereby empowered to employ one deputy inspector in each county in this state, provided that in each of the Counties of Hennepin and Ramsey he may appoint two, if the prompt and faithful performance of the duties imposed by the provisions of this act shall require said number, and not otherwise. The said deputies are hereby empowered to perform under his direction and authority all the duties in reference to inspection herein required

of the state inspector, and shall be liable to the same penalties.

Said deputies are hereby authorized and empowered to collect and receipt for all fees earned by them that are now, or may be hereafter, provided by law for the inspection of oils, and shall, when making their monthly reports to the state inspector, as provided in section five (5) of this act, include in such report a verified statement of all moneys received by them, and shall account for and pay over, at the time of making such report, all sums collected by them to the state inspector. Said deputy inspectors shall receive as compensation for their said services a salary not to exceed one hundred ($100) per month, the same to be paid and proportioned by the state inspector upon the basis of the fees earned and collected by the deputy during the preceding month; but in no case shall the deputy's salary exceed seventy-five (75) per centum of the amount of fees earned by him during the preceding month unless said seventy-five (75) per centum will amount to less than fifty (50) dollars per month, in which case such deputy shall be entitled to receive so much of the fees earned by him, if sufficient therefor, as will equal said sum of fifty ($50) dollars; but in no case shall he receive more than the amount of fees earned and collected by him.

It shall be the duty of the state inspector, on or before the tenth (10th) day of each month, to certify and file with the state auditor, pursuant to the provisions of this act, the amount of salary due to each of his said deputies for the preceding month, who shall draw a warrant upon the state treasurer for the amount so certified, payable to the order of the deputy named in the certificate, out of the inspection fund hereby created.

Each deputy inspector, before he enters upon the duties of his office, shall take a like oath or affirmation to that of the state inspector, as herein provided, and shall execute a bond to the State of Minnesota conditioned for the faithful performance of his duties under this act, in a sum not less than five hundred (500) dollars, nor more than two thousand (2,000) dollars, with good and sufficient sureties, to be approved by the judge, or one of the judges of the district court of the county in which such deputy, resides, and when so approved, shall be filed in the office of the secretary of state. Provided, that the state inspector may, for reasonable cause, remove any deputy inspector, and appoint another in his place, if the service shall require it.

For the payment of the salaries of the state and deputy inspectors, as provided in this act, and in procuring and furnishing such implements or instruments for testing oils, or for branding, or for blanks, or for traveling expenses necessarily incurred by the state inspector of illuminating oils, as may be necessary and suitable to carry out the provisions and intent of this act, the sum of thirty thousand dollars ($30,000), or so much thereof as may be necessary, and shall be and is hereby annually appropriated out of the illuminating oil inspection fund herein provided for, and all payments made pursuant hereto shall be charged to and paid out of the said illuminating oil inspection fund hereby created; provided, that no payments shall be made hereunder except upon the warrants of the state auditor, and such warrants shall issue only upon the certificate of the state inspector filed with the state auditor, both in respect to salaries, as herein provided, and to disbursements authorized by the pro-

visions of this act; provided, that nothing in this act contained shall be construed as waiving the right of the state to maintain a civil action, or civil actions, for the recovery of the fees earned by the chief inspector or his deputies, under the provisions of this act.

Section 3. That section eleven (11) of said chapter twenty (20) be and the same is hereby amended so as to read as follows:

Section 11. The state inspector of illuminating oils, and each of his deputies, shall be entitled to demand, receive and collect from the owner or party calling upon him, or for whom he shall inspect oils under the provisions of this act, the sum of forty (40) cents for testing and marking a single barrel cask or package, not containing more than fifty-five (55) gallons; twenty-five (25) cents each when not exceeding ten (10) in number, of above capacity each, submitted at one time for inspection; fifteen (15) cents each where the number of barrels, casks or packages exceed ten (10) in number, and a like sum for each fifty-five gallons contained in tank cars, or storage tanks, or other receptacles.

Section 4. This act shall take effect and be in force from and after January first (1903) nineteen hundred and three.

Approved April 2, 1901.

CHAPTER 502 OF THE LAWS OF 1909.

The provisions of this Act heretofore appear in this Appendix and are designated as Sections 3619-3632, General Statutes of 1913.

CHAPTER 271, LAWS 1915.

AN ACT ENTITLED "AN ACT TO AMEND SECTIONS 3622 AND 3625 AND 3626 AND 3628 AND 3630 AND 3632 OF THE GENERAL STATUTES OF MINNESOTA OF 1913, RELATING TO THE INSPECTION AND SALE OF PETROLEUM PRODUCTS, MANNER OF INSPECTION, ESTABLISHING FEES FOR INSPECTIONS, PROHIBITING THE SALE OF ADULTERATED PETROLEUM PRODUCTS AND PROVIDING PENALTIES FOR VIOLATIONS OF THIS ACT.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. *Certificate showing test of oil*—That Section 3622 of the General Statutes of 1913 be amended so as to read as follows:

Section 3622. No person shall sell, or offer for sale, or use for illuminating purposes, any coal oil, or products thereof, unless the same has been inspected and branded as provided by this act; nor any that will ignite at a temperature below one hundred and twenty degrees Fahrenheit.

The instrument to be used in making tests shall be the "Tagliabue Open Cup"; and the gravity of said oils shall be determined by the "Tagliabue Standard Registered Hydrometer Beaume Scale" at a temperature of sixty degrees Fahrenheit, and said gravity shall be stenciled on each barrel or package containing said oil.

There shall be printed or stenciled on each tank wagon sale ticket *car, can, cask, barrel or tank* covering delivery of oil the following:

"This is to certify that the oil covered by this sale has a gravity test of ..... (*This blank shall be filled in with the actual gravity test*), and a fire test of

not less than one hundred and twenty degrees and has been inspected and approved by the state oil inspector."

.....

(Name of person or corporation selling or furnishing same shall be signed, printed or stenciled on the above line.)

Provided, however, that it shall be deemed a full compliance with this act if said label or tank wagon sale ticket shows a Beaume gravity not higher than the actual Beaume gravity of the goods sold as determined by the "Tagliabue Standard Registered Hydrometer Beaume Scale" at a temperature of sixty degrees Fahrenheit.

Every person or corporation selling or delivering oil in bulk means of portable tanks, shall, in lieu of the stamp or brand herein provided for, furnish and deliver to the purchaser a certificate as above set forth.

Section 2. *Gasoline, etc., to be inspected*—That Section 3625 of said General Statutes of 1913 be amended so as to read as follows:

Section 3625. For the purpose of this act, *all gasoline, benzine and naphtha under whatever name called, held or offered for sale which may or can be used for illuminating, heating or power purposes*, shall be deemed to be subject to the same inspection and control as provided for in this act for illuminating oils, except, that the inspectors are not required to test it other than to ascertain its gravity; and it shall be unlawful for any person, dealer or vendor to sell or offer for sale any *gasoline, benzine or naphtha for any of such purposes*, that has not been so inspected and approved.

All gasoline, *benzine and naphtha* shall be tested as to gravity in the same manner as oil, and shall be branded

"Unsafe for illuminating purposes" and every barrel, cask, or package which contains gasoline, *naphtha or benzine* shall be labeled or branded with the word "Gasoline," "*Nophtha*" *or* "*Benzine*" as the case may be, in large letters at least two inches in size, and the gravity thereof shall be *printed* or stenciled on each barrel, *can, cask, tank or other vessel* covering deliveries of such *gasoline, naphtha or benzine* the following:

"This is to certify that the ..... (*gasoline, naphtha or benzine as the case may be, shall be inserted in this blank*) covered by this sale has a gravity test of ..... (*the actual gravity test to be inserted in this blank*) and has been inspected and approved by the state oil inspector."

.....

(*Name of corporation or person selling or furnishing same shall be signed, printed or stenciled on the above line.*)

Provided, however, that any person or corporation selling or delivering gasoline, benzine or naphtha in bulk by tanks shall, in lieu of the stamp or brand herein provided for, (*furnish and deliver to the purchaser a certificate as above set forth.*

Provided, however, that it shall be deemed a full compliance with this act if the said label or tank wagon sale ticket shows a Beaume gravity not higher than the actual Beaume gravity of the goods sold as determined by the "Tagliabue Standard Registered Hydrometer Beaume Scale" at a temperature of sixty degrees Fahrenheit.

Section 3. *Inspector given permission to enter upon premises for inspection*—That section 3626 of the General Statutes of 1913 be amended so as to read as follows:

Section 3626. The inspector and his deputies are empowered and it is hereby made their duty to enter *into or* upon the premises of all wholesale and retail dealers in *or any manufacturer, refiner or vendor of said illuminating oils, gasoline, benzine or naphtha* and to inspect the receptacles in which said *petroleum products* are stored; and it is made the duty of all dealers in such petroleum products to keep such *receptacles free from water and all other foreign substances; and if such inspector shall find or discover on said premises any oil, gasoline, benzine or naphtha, which shall not have been examined or tested and properly marked, stamped, sealed or branded he shall at once proceed to test and thereafter mark, stamp, seal or brand the same.*

Every agent and employee of any railroad company or other transportation company having the custody of books or records showing the shipment of receipt of the oils, gasoline, benzine or naphtha mentioned in this act shall give and permit the chief state inspector of oils and his deputies free access to such books and records for the purpose of determining the amount of oils, gasoline, benzine and naphtha shipped and received. Any such agent or employee of any railroad company or other transportation company refusing or neglecting to comply withm these provisions shall be guilty of a misdemeanor and shall be punished by a fine not to exceed fifty dollars or by imprisonment in the county jail not to exceed sixty days, or by both such fine and imprisonment.

Section 4. *Oil may be placed in barrels after inspected in bulk.* That Section 3628 of the General Statutes of 1913 be amended so as to read as follows:

Section 3628. Oil, gasoline, naphtha or benzine shipped in tanks or tank cars shall not be unloaded until it is duly inspected, providing such inspection is made within twenty-four hours after the arrival and notice setting forth the number of the car and date of its arrival has been given the inspector. Each fifty gallons or major fraction thereof shall be considered a barrel in computing the inspection fees. *No further inspection shall be necessary, and if such oil, gasoline, naphtha or benzine be afterwards placed in barrels, the person, firm or corporation so barreling same shall brand each barrel as hereinbefore provided.*

Section 5. *Oil inspected in other states may be admitted without additional inspection on payment of fees*—That section 3630 of the General Statutes of 1913 be amended so as to read as follows:

Section 3630. The fees for inspecting and branding shall be as follows:

1. For a single barrel or other receptacle containing not more than fifty gallons, forty cents.

2. If more than one and not more than ten such receptacles be inspected at one time and place, twenty-five cents for each.

3. If more than ten, fifteen cents for each additional barrel or receptacle, except as hereinafter provided.

4. Oil, gasoline, naphtha or benzine in tanks or tank cars containing more than fifty barrels, *seven cents per barrel.*

If the quantity in any one receptacle exceeds one barrel excepting where the same is in tanks or tank cars con-

taining fifty barrels or more, *seven cents* shall be charged for each fifty gallons thereof.

Such fees shall be payable at the time of the inspection.

Provided, that when oil, gasoline, benzine or naphtha is shipped outside of the state after inspection fees have been paid, the firm shipping same shall be given credit by the inspector for such fees.

And provided, further, that all kerosene oil, gasoline, benzine and naphtha inspected in other states where the inspection requirements are as high as those required herein, may be admitted without additional inspection on payment of the fees required by this act.

Section 6. *Penalty for adulteration or changing of certificate.*—That Section 3632 of the General Statutes of 1913 be amendded so as to read as follows:

Section 3632. *Any person, firm or corporation who shall personally, or by clerk or agent, wilfully adulterate any illuminating, or heating oil by adding thereto benzine, naphtha, or paraffine oil or any substance or thing whatever shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment in the county jail for not more than six months.*

Any person, firm or corporation who shall personally, or by clerk, or agent, falsely stamp, seal, brand, or mark any cask, barrel, or other package or receptacle, of oil, gasoline, benzine or naphtha, or who shall cause the changing altering, or defacing in any manner any stamp, seal, brand, or device, affixed to any cask, barrel or other package, or receptacle of oil, gasoline, benzine or naphtha by any deputy inspector, or who shall refill or use any cask, barrel or other package or receptacle having a deputy in-

spector's seal, mark, stamp, or brand thereon without cancelling or defacing said seal, mark, stamp or brand and having the oil, gasoline, benzine or naphtha in such a cask, barrel or other package or receptacle properly examined or tested and stamped or marked under the provisions of this chapter, or who shall offer for sale, or who shall sell any such oil, gasoline, benzine or naphtha representing it to be in any respect other and different in quality or kind than as represented to the person so purchasing same, shall be liable to a fine of not less than five dollars nor more than five hundred dollars, or to imprisonment in the county jail for not more than six months, or to both such fine and imprisonment; and who shall sell or in any way dispose of any empty cask, barrel or other package or receptacle bearing a deputy inspector's seal, brand or stamp, without first thoroughly cancelling, defacing or removing such seal, brand, stamp, mark or any combination thereof, shall be liable to a fine of not less than five dollars nor more than five hundred dollars, or to imprisonment in the county jail not exceeding six months, or to both such fine and imprisonment.

Any person who shall violate any of the provisions of this act, not specifically mentioned in this section, shall be guilty of a gross misdemeanor.

Approved April 23, 1915.

CHAPTER 331, LAWS OF 1917.

(H. F. No. 794).

AN ACT TO AMEND SECTION 3630, GENERAL STATUTES OF 1913, AS AMENDED BY SECTION 5 OF CHAPTER 271, LAWS OF 1915, RELATING TO THE INSPECTION OF PETROLEUM PRODUCTS AND ESTABLISHING FEES FOR SUCH INSPECTION.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. *Fees for inspection of petroleum, etc., in more than 50 barrel lots reduced to five cents per barrel.*—That section 3630, General Statutes of 1913, as amended by section 5 of chapter 271, Laws of 1915, be amended so as to read as follows:

Section 3630. The fees for inspecting and branding shall be as follows:

1. For a single barrel or other receptacle containing not more than fifty gallons, forty cents.

2. If more than one and not more than ten such receptacles be inspected at one time and place, twenty-five cents for each.

3. If more than ten, fifteen cents for each additional barrel or receptacle, except as hereinafter provided.

4. Oil, gasoline, naphtha or benzine in tanks or tank cars containing more than fifty barrels *five* cents per barrel.

If the quantity in any one receptacle exceeds one barrel excepting where the same is in tanks or tank cars con-

taining fifty barrels or more, *five* cents shall be charged for each fifty gallons thereof.

Such fees shall be payable at the time of the inspection.

Provided, that when oil, gasoline, benzine or naphtha is shipped outside of the state after inspection fees have been paid, the firm shipping same shall be given credit by the inspector for such fees.

And provided, further, that all kerosene oil, gasoline, benzine and naphtha inspected in other states where the inspection requirements are as high as those required herein may be admitted without additional inspection on payment of the fees required by this act.

Section 2. This act shall take effect and be in force from and after its passage.

Approved April 17, 1917.

SECTION 3229, GENERAL STATUTES OF MINNESOTA FOR 1913.

Duties—State offices, institutions, properties, industries and improvements—Said examiner shall exercise a constant supervision over the books and accounts of the several public offices, institutions, properties, industries, and improvements of the state, and over the financial records and transactions of public boards, associations, and societies supported wholly or in part by state funds. In all offices where the records of such public affairs are kept and the finances thereof handled, he shall enforce, correct methods of accountancy and, in his discretion, prescribe and install systems of accounts and financial reports.

Once in each year without previous notice, he shall visit each of such offices, institutions and industries, and, so far as practicable, inspect such properties and improvements, and he shall thoroughly examine the books and accounts thereof, verifying the funds, securities and other assets, check the items of receipts and disbursements with the voucher records thereof, ascertain the character of the official bonds for the officers thereof and the financial ability of the bondsmen, inspect the sources of revenue thereof and the use and disposition of state appropriations and property, investigate the methods of purchase and sale and the character of contracts on public account, enforce a proper custody and depository for the funds and securities thereof, verify the inventory of public property and other assets, held in trust, and ascertain that all financial transactions and operations involving the public funds and property of the state comply with the spirit and purpose of the law and are for the best protection of the public interest. ('13 c. 555, Sec. 3).

SECTION 8242, GENERAL STATUTES OF MINNESOTA FOR 1913.

Examination of accounts of public officers—In case of the filing of a new official bond or other security, the expiration of the term of office, or the death, resignation, or removal of the officer, the officer, board, committee, or body required or permitted to accept or approve such bond or other security, having jurisdiction or being authorized or required to examine the accounts of such officer, shall make or cause to be mae a thorough examination of his

accounts, and, if any shortage or irregularity is discovered, shall at once notify such officer and his sureties of the amount claimed to be due, or the nature of the irregularity. Such statement shall be in writing, and be served upon such officer and his sureties, or their agents or attorneys, by mail, adddressed to their residences, if known; but failure to make the examination or give such notice shall not discharge the sureties. (4532).

PURE OIL COMPANY *v.* STATE OF MINNESOTA.

ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

No. 74. Argued November 21, 22, 1918.—Decided December 9, 1918.

For the purpose of promoting the public safety and of protecting the public from fraud and imposition, a State, in the absence of conflicting regulation by Congress, may provide for inspection of illu-

minating oils and gasoline, while yet in interstate transit, and impose a charge upon the owner reasonably sufficient to cover the cost of inspection. P. 161.

Such inspection charges, fixed by a state legislature, are accepted as reasonable unless clearly shown to be obviously and largely beyond what is needed to pay for the inspection service rendered. P. 163.

Where the receipts from inspection fees through a number of years considerably exceeded the cost of inspection, but this was explained by increasing consumption of the product inspected, and the legislature during the period reduced the fee, *held*, that there was no ground to question the good faith of the legislature in enacting the law under which the fees were charged. P. 164.

Upon the question whether an inspection of gasoline served to promote public safety and protect against fraud and imposition, concurrent findings of state trial and supreme courts *held* conclusive. *Id.*

Whether oil and gasoline, imported into a State in tank cars, continued to be subjects of interstate commerce while awaiting state inspection at the owner's place of business, before they were unloaded and held for general sale and distribution—not decided. *Id.*

134 Minnesota, 101, affirmed.

THE case is stated in the opinion.

Mr. Nathan H. Chase, with whom *Mr. Clifford Thorne* was on the brief, for plaintiff in error.

Mr. Egbert S. Oakley, Assistant Attorney General of the State of Minnesota, with whom *Mr. Clifford L. Hilton*, Attorney General of the State of Minnesota, was on the brief, for defendant in error.

MR. JUSTICE CLARKE delivered the opinion of the court.

In this case the State of Minnesota sued the plaintiff in error, an extensive dealer in oils, to recover fees, which were charged for the inspection of oils and gasoline, between February 1, 1913, and April 25, 1915. The judgment of the State Supreme Court affirming that of the trial court in favor of the State is before us for review on writ of error.

The inspection involved was provided for by chapter 502 of the General Laws of the State of Minnesota for the year 1909, the title of which is: "An Act relating to the inspection of petroleum products, the appointment of chief inspector of oils and deputy inspectors, manner of inspection, establishing fees for inspection and salaries of inspectors, prohibiting the sale of adulterated oils, and providing penalties for the violation thereof," and the title of the chapter in which the original act is embodied in the General Statutes of the State is: "Inspector of Oils." Gen. Stats. of Minnesota, 1913, c. 20.

Section 3622 provides that no person shall sell or offer for sale in the State illuminating oil which has not been inspected as provided for by the act, or which will ignite at a temperature below 120° Fahrenheit. A method is prescribed for making this "fire test," and for determining the gravity of such oils and the results must be stenciled on each container of oil.

Section 3625 deals with gasoline, and requires that it shall be subject to the same inspection and control as is prescribed for illuminating oils "except that the inspectors are not required to test it other than to ascertain its gravity."

All containers of gasoline must be labeled conspicuously with the word "Gasoline," the gravity must be stenciled thereon and it is made unlawful to sell or offer it for sale until inspected and approved. Provision is also made (§ 3626) for the inspection of gasoline "receptacles" to keep them "free from water and all other foreign substances," and the sale of "adulterated" gasoline is prohibited (§ 3627). Obviously this is, in form, a not unusual type of inspection law.

The findings of fact by the trial court include the following:

During the period under discussion the State inspected 9,914 barrels of oil and 81,998 barrels of gasoline owned

by the plaintiff in error, all of which were brought into Minnesota from other States by common carriers in tank cars, which were held at the place of business of the plaintiff in error until inspected, and all were unloaded from the cars in which they arrived and were held for general sale and distribution. And this in terms:

"That the testing of gasoline in the manner provided by the statute . . . indicates to the public the degree of safety of such gasoline, and has a fair relation to the quality and value thereof. That such inspection protects the community, as applied to sales of gasoline in Minnesota, from frauds and impositions, and advises, informs and warns the public of the volatile character of said gasoline and the relative degree of care to be exercised in handling, storing and using the same."

On the case thus stated it is claimed that the Supreme Court of Minnesota erred in refusing to hold:

First, That the inspection fees imposed were so excessive in amount as to render the act a revenue rather than an inspection measure and that as such it offends against § 8, Article I of the Federal Constitution, as an attempt by the State to regulate interstate commerce; and

Second, That to the extent that the act applies to gasoline it is not a valid exercise of the police powers of the State, because it does not serve to protect or safeguard the health, morals or convenience of the public and therefore offends against the Fourteenth Amendment to the Federal Constitution by depriving the plaintiff in error of its property without due process of law to the extent of the fees which it in terms exacts.

The principles of law applicable to the decision of the case thus before us are few and they are perfectly settled by the decisions of this court.

In the exercise of its police power a State may enact inspection laws, which are valid if they tend in a direct and substantial manner to promote the public safety and

welfare or to protect the public from frauds and imposition when dealing in articles of general use, as to which Congress has not made any conflicting regulation, and a fee reasonably sufficient to pay the cost of such inspection may constitutionally be charged, even though the property may be moving in interstate commerce when inspected. *Patapsco Guano Co.* v. *North Carolina Board of Agriculture*, 171 U. S. 345, 357, 358, 361; *McLean & Co.* v. *Denver & Rio Grande R. R. Co.*, 203 U. S. 38; *Asbell* v. *Kansas*, 209 U. S. 251; *Patterson* v. *Kentucky*, 97 U. S. 501, 504; *Savage* v. *Jones*, 225 U. S. 501, 525.

Specifically, state laws providing for the inspection of oils and gasoline have several times been recognized as valid by this court. *Patterson* v. *Kentucky*, 97 U. S. 501; *Red "C" Oil Mfg. Co.* v. *Board of Agriculture of North Carolina*, 222 U. S. 380, and *Waters-Pierce Oil Co.* v. *Deselms*, 212 U. S. 159.

But if such inspection charge should be obviously and largely in excess of the cost of inspection, the act will be declared void because constituting, in its operation, an obstruction to and burden upon that commerce among the States the exclusive regulation of which is committed to Congress by the Constitution. *Postal Telegraph-Cable Co.* v. *Taylor*, 192 U. S. 64; *Foote & Co.* v. *Maryland*, 232 U. S. 494, 504, 508.

Plainly the application of the principles thus stated leaves open for consideration only the question as to whether the inspection charge is so excessive as to render the act a revenue measure, as the plaintiff in error claims that it is, and not an inspection law enacted in good faith to promote the public safety and prevent fraud and imposition upon the users of oil and gasoline. In the consideration of this question the discretion of the legislature in determining the amount of the inspection fee will not lightly be disturbed. Its determination is *prima facie* reasonable and the courts will not "enter into any nice

calculation as to the difference between cost and collection; nor will they declare the fees to be excessive unless it is made clearly to appear that they are obviously and largely beyond what is needed to pay for the inspection services rendered." *Foote & Co.* v. *Maryland*, 232 U. S. 494, 504, and *Western Union Telegraph Co.* v. *New Hope*, 187 U. S. 419.

The findings of fact give the following statement of receipts and expenses under the law assailed, from and including the year 1909, in which it was passed, to April 30, 1915, which includes the last day covered by the claim in suit, viz:

Year	Receipts	Expenses	Percentage of Receipts Used for Department Expenses
1909	$34,934	$30,288	87%
1910	50,667	40,044	79%
1911	56,852	40,494	71%
1912	63,354	39,999	63%
1913	72,656	47,117	65%
1914	81,565	52,467	64%
July 31, 1914, to April 30, 1915,	62,689	46,863	75%

This statement of expenses, however, does not include any charge for offices for the Oil Department, which were in the state capitol, for the services of the state auditor and treasurer in keeping accounts and making collections, for legal counsel, and for services of chemists, or for the Public Examiner's Department, these not being susceptible of exact determination. The reduced percentage of expenses to receipts in several of the years was obviously due to the rapid expansion in the use of gasoline without a corresponding increase in the expenses of administration. This percentage, however, was rising in 1915 and doubtless has increased greatly since, under war conditions. We take judicial notice also of the fact that in 1915 the inspection

fee on oil and gasoline in tank cars was reduced by the legislature from 10 to 7 cents and in 1917 from 7 to 5 cents. It was obviously impossible for the state legislature to determine accurately in advance either what the receipts from or the cost of inspection would be, and having regard to the period of rapid increase in the use of gasoline, through which the country was passing in the years under consideration, and to the action of the legislature in reducing the fee, we cannot consent to impute to that body a purpose other than to conform to the requirements of the Constitution when enacting this legislation.

The conclusion thus arrived at sustains the validity of the state law as an inspection measure and renders it unnecessary to consider the much argued question as to whether or not the oil and gasoline in question were in interstate transit when inspected. As an inspection law, under the decisions cited, the act is validly applicable, alike whether the property was in intra or in interstate commerce when inspected.

Neither is it necessary to consider whether the evidence sustains the contention that the inspection of gasoline provided for by the act was of a character such that it did not serve to promote the public safety or to protect the community against fraud and imposition. The finding of fact by the trial court, approved by the Supreme Court of the State, is accepted as conclusive by this court. *Northern Pacific Ry. Co.* v. *North Dakota*, 236 U. S. 585, 593.

It results that the judgment of the Supreme Court of Minnesota must be

Affirmed.